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Vol. I
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 509

**DENIS J. DRISCOLL, THOMAS C. BUCHANAN AND
RICHARD J. BEAMISH, ET AL., APPELLANTS,**

vs.

EDISON LIGHT AND POWER COMPANY

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF PENNSYLVANIA**

FILED DECEMBER 6, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

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THE EASTERN DISTRICT OF PENNSYLVANIA

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**IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

DECEMBER TERM, 1937

No. 9893

EDISON LIGHT & POWER COMPANY,

VS.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAM-
ISH, Arthur Colegrove and Donald Livingston, Individ-
ually and as the Persons Constituting the Pennsylvania
Public Utility Commission

UTILITY CONSUMERS LEAGUE OF YORK, PA. (Intervenor)

Walter Biddle Saul, Esq.

Samuel Graff Miller, Esq., Edward Knuff, Esq.

Herbert B. Cohen, Esq.

DOCKET ENTRIES

- Dec. 14, 1937. Bill of Complaint filed.
 " 14, " Subpoena ~~exit~~—returnable January 3, 1938.
 " 17, " Order convening Court under Sec. 266 Judi-
 cial Code filed.
 " 17, " Petition of Utility Consumers League of
 York, Pa., for leave to intervene and Or-
 der of Court granting prayer of petition
 filed.
 " 17, " Hearing ~~sur~~ motion for restraining order.
 " 17, " Order to show cause and Temporary Re-
 straining Order filed.
 " 20, " Affidavits in support of plaintiff's motion
 for restraining order filed.
 " 20, " Bond of Plaintiff ~~sur~~ restraining order in
 \$75,000., without surety and Order of
 Court approving bond filed.
 " 28, " Appearance of Herbert B. Cohen, Esq., for
 Utility Consumers' League filed.

Docket Entries--Continued

- Jan. 4, 1938. Petition of Respondents for order requiring surety bond filed.
- “ 4, “ Answer of Plaintiff to petition for order requiring surety bond filed.
- “ 4, “ Hearing sur petition for order requiring surety bond.
- “ 12, “ Answer filed.
- “ 12, “ Appearance of Samuel Graff Miller, Esq., and Edward Knuff, Esq., for defendants filed.
- “ 17, “ Answer by Utility Consumers League filed.
[fol. 4]
- Jan. 17, 1938. Hearing sur motion for preliminary injunction. Witnesses sworn.
- “ 17, “ In open Court: Motion to strike Answer of Utility Consumers League from record. Eo die: Motion denied.
- “ 17, “ Testimony closed. Restraining order continued and bond increased to \$150,000.
- “ 17, “ Subpœna returned: “service accepted” and filed.
- “ 17, “ Affidavit of service of notice of convening of Statutory Court filed.
- “ 25, “ Bond of Plaintiff sur restraining order in \$150,000., without surety, and Order of Court approving bond filed.
- “ 31, “ Testimony filed.
- May 9, “ Trial hearing.
- “ 16, “ Transcript of Minutes and Exhibits before Public Service Comm. filed. (3 Vol.)
- “ 24, “ Complainant's request for findings of fact and conclusions of Law filed.
- June 2, “ Bond of Plaintiff sur restraining order in \$240,000., without surety, and Order of Court approving bond filed.
- “ 21, “ Stipulation of counsel amending caption filed.
- Oct. 10, “ Opinion, Davis, C. J., Buffington, C. J., and Dickinson, D. J., concurring, granting permanent injunction and making certain findings of fact and conclusions of law filed.

Docket Entries—Continued

- Oct. 14, 1938. Decree granting perpetual injunction, with costs, and cancelling plaintiff's bond, filed.
10/14/38 Notice mailed.
- " 22, " Plaintiff's bill of costs filed.
- Nov. 9, " Supplement to bill of costs filed.
- " 18, " Petition of defendant for appeal and Order of Court Allowing Appeal filed. 11/19/38 Notice mailed Conlen, LaBrum, & Beechwood, Esqs.
- " 18, " Assignment of Errors filed.
- " 18, " Defendants' statement of jurisdiction filed.
- " 18, " Stipulation of counsel as to record on appeal filed.
- " 18, " Præcipe for transcript of record on appeal filed.
- " 18, " Citation allowed and issued.
- [fol. 5]
- Nov. 18, 1938. Citation returned: "service accepted" and filed.
- " 22, " Plaintiff's supplemental bill of costs taxed in sum of \$659.44.
- " 28, " Stipulation of Counsel that hearing be considered as upon motion for permanent injunction filed.
- " 28, " Respondent's requests for findings filed.
- " 28, " Bond sur appeal in \$500, with American Employers Insurance Co. surety and Order of Court approving bond filed.
- Dec. 3, " Amended præcipe for transcript of record filed.
- " 5, " Stipulation of Counsel substituting John Sullivan in place of Arthur Colgrove as party defendant, filed.
- " 5, " Statement directing plaintiff's attention to rule 12 of Supreme Court and acceptance of service filed.
- " 5, " Amended præcipe for transcript of record and stipulation filed.

[fol. 6] IN UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA, DECEMBER TERM, 1937

In Equity. No. 9893

EDISON LIGHT & POWER COMPANY, a Corporation,
Complainant,

against

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J.
BEAMISH, Guy K. Bard, and Donald Livingston, Individ-
nally and as the Persons Constituting the Pennsylvania
Public Utility Commission, Respondents

BILL OF COMPLAINT—Filed December 14, 1937

Edison Light & Power Company, the above named complainant, by Walter Biddle Saul, its attorney, for its bill of complaint against the respondents, alleges:

First. That the complainant is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, and is and for many years has been a public utility company engaged in the business of generating, transmitting, distributing and selling electric energy to the residents of the City of York, Pennsylvania, and its environs.

Second. That the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald Livingston are and at all times herein complained of were the persons constituting the Pennsylvania Public Utility Commission, an administrative body created by an act of Assembly of said Commonwealth. The respondents are sued herein individually in their respective own rights, and as the persons constituting said Pennsylvania Public Utility Commission, and are hereinafter sometimes collectively referred to, both in their respective individual capacities and in their official capacities as members of said Pennsylvania Public Utility Commission, as the "Commission". The powers and duties of said Commission with respect to the regulation of public utilities are prescribed and limited by an Act of the Assembly of the Commonwealth of Pennsylvania known as the "Public Utility Law", effective June 1, 1937.

Third. That complainant is informed and believes and therefore avers that the respondent Driscoll is a resident of the Borough of St. Marys in the Western District of Pennsylvania; that the respondent Buchanan is a resident of the Borough of Beaver in the Western District of Pennsylvania; that the respondent Beamish is a resident of the City of Harrisburg in the Middle District of Pennsylvania; that the respondent Bard is a resident of the City of Lancaster in the Eastern District of Pennsylvania; and that the respondent Livingston is a resident of the Borough of Media in the Eastern District of Pennsylvania.

[fol. 7] Fourth. That this is a civil suit in equity. That the matters in controversy and the questions herein involved arise under the Constitution and laws of the United States of America. That the amount in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs. That this bill of complaint is filed and this suit prosecuted to enjoin and restrain the enforcement of an order of the Commission dated November 30, 1937 and served upon the complainant on or about December 7, 1937 (a true and correct copy of which is annexed hereto, made a part hereof, and marked Exhibit "A"), imposing upon the complainant a reduction in annual gross operating revenues of approximately \$435,000, as specified therein.

Fifth. That on or about November 30, 1937, York Railways Company, parent of complainant, filed its petition for reorganization in the United States District Court for the Eastern District of Pennsylvania in accordance with the terms and provisions of Section 77B of the Federal Bankruptcy Act as amended, and on the same day the said Court entered its order assuming exclusive jurisdiction of the cause and of the property, business and assets of the aforementioned debtor corporation. That the principal assets of said York Railways Company consist of the outstanding capital stock of complainant and certain indebtedness of the latter to said debtor corporation.

Sixth. That the Pennsylvania Public Service Commission, the predecessors of the respondent Commission, on January 27, 1936, instituted on their own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates and charges of the complainant for electric service; that thereafter numerous hearings

were held before the Commission and its predecessors in office, at which voluminous testimony and exhibits were introduced on behalf of the complainant in proof of the fair value of its property used and useful in the public service and the return thereon which the complainant is entitled to earn, and of the reasonable and necessary allowances required to be made for its operating expenses in determining such return; that certain testimony and exhibits were likewise presented on behalf of the Commission and its predecessors in office, and the introduction of all of such evidence was completed on June 23, 1937; that on the same date argument was had on the question of whether or not the instant case was a proper one for the imposition of temporary rates, at which time the complainant asserted that, all hearings having been completed, there was no reason why a final order should not be entered by the Commission prescribing permanent rates; that notwithstanding these facts, the Commission on July 13, 1937, approximately three weeks after the conclusion of hearings, entered an order directing the complainant to file rate schedules effecting a temporary reduction in annual gross operating revenues of approximately \$435,000; that on July 27th, the Commission rescinded said temporary order and entered another temporary order requiring an identical reduction of approximately \$435,000 in annual gross operating revenues; that thereafter complainant filed its bill of complaint in a Federal Statutory Court assigning various errors and illegalities in said order of July 27, and, after hearing, the said Court on October 15, 1937, granted a permanent injunction restraining the enforcement of the temporary order of the Commission and the rates set forth [fol. 8] therein; that subsequently complainant and the Commission, by stipulation, made a part of the record of the rate proceedings certain additional exhibits containing relevant evidence, and complainant thereafter waived the right to file briefs or to argue questions of law involved and again asserted that there was no valid purpose to be served by any order prescribing temporary rather than permanent rates. That the Commission, nevertheless, and despite the fact that all hearings had been completed and that neither complainant nor the Commission desired to offer any additional testimony or evidence in said rate proceedings, in violation of the plain spirit and intent of Section 310 of the Public Utility Law of Pennsylvania, entered

another order prescribing temporary rates to be charged by complainant, again exacting a reduction in its gross annual revenues in the sum of \$435,000. That by virtue of said action of the Commission in entering another temporary order, complainant was deprived of its right to a judicial review of the provisions of said order, Exhibit A, the Public Utility Law of Pennsylvania not permitting a supersedeas to stay the effectiveness of temporary rates pending an appeal from an order prescribing such rates, said order imposing upon the complainant the necessity of filing schedules prescribing unreasonable and confiscatory rates, and complainant alleges and avers that the action of the respondents in failing and refusing to enter a final order establishing permanent rates is arbitrary and unreasonable, and said order Exhibit A is arbitrary, unreasonable and unlawful.

Seventh. That said order, Exhibit A, purports to be made pursuant to the provisions of Section 310 of Article III of the Pennsylvania Public Utility Law. That said Section 310 is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, in that:

(1) It purports to empower the Commission to fix, determine and prescribe so-called temporary rates to be charged by public utilities under the jurisdiction of the Commission, which will not permit said public utilities to earn a fair return on the fair value of their property used and useful in the public service, and thereby to deprive complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(2) It purports to empower the Commission to fix, determine and prescribe such so-called temporary rates by alternative methods and upon alternative bases, pursuant to one of which (sub-paragraph (a)) such rates may provide a return as low as 5% upon the original cost less accrued depreciation of the physical property of such public utilities used and useful in the public service, whereas pursuant to an alternative method or basis (sub-paragraph (b)) such rates are to provide a return of not less than an amount equal to the operating income (as adjusted by the Commission) of such public utilities for the calendar year 1935 or some subsequent year, regardless of whether such

adjusted operating income is greater or less than 5% of such original cost less accrued depreciation; that it, therefore, purports to empower the Commission to fix, determine and prescribe so-called temporary rates which will discriminate unfairly between such public utilities, and thereby deny complainant and all other such public utilities the equal protection of the laws.

[fol. 9] (3) Sub-paragraph (c) of said Section 310 purports to empower the Commission to fix, determine, prescribe and change such so-called temporary rates every month or at any other interval and thereby to deny to complainant and all other such public utilities the right to a fixed return and to prevent complainant and all other such public utilities from establishing a definite policy with respect to their financial affairs and the conduct of their businesses and operations in an orderly and efficient manner; the said sub-paragraph (c) fails to provide for notice to such public utilities of any such determination, prescription or change of such so-called temporary rates or an opportunity to be heard with respect thereto and thereby permits the Commission to deprive complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(4) Sub-paragraph (d) of said Section 310 purports to empower the Commission to prescribe such so-called temporary rates for a trial period without giving to such public utilities any notice thereof or an opportunity to be heard with respect thereto, and thereby to deprive complainant and all other such public utilities of their property without due process of law.

(5) Sub-paragraph (e) of said Section 310 does not and cannot provide adequate and complete compensation or reimbursement for or restore the loss occasioned by the confiscation of the property of complainant and all other such public utilities or for the deprivation of the property of complainant and all other such public utilities without due process of law, all as hereinabove set forth.

Eighth. That said Section 310 is in violation of the Constitution of the Commonwealth of Pennsylvania in that Sub-paragraphs (b), (c) and (d) thereof constitute an unlawful delegation of legislative power in contravention of Section 1 of Article II of said Pennsylvania Constitution.

Ninth. That said order, Exhibit A, violates the rights guaranteed to complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives complainant of its property without due process of law, in that said order is not supported by any substantial evidence before the Commission.

Tenth. That said order Exhibit A further violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereof and deprives the complainant of its property without due process of law and without just compensation therefor, in that a fair return on the fair value of the property devoted to the rendition of the public service of complainant is an amount far greater than that remaining to the complainant after effecting the reduction in its annual gross operating revenues provided in said order.

Eleventh. That said order, Exhibit A, violates the rights guaranteed to complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives complainant of its property without due process of law and without just compensation therefor, in that:

(1) The determination by the Commission of the basis for the prescription of temporary rates for complainant is arbitrary, confiscatory and unreasonable, and the amount of \$5,250,000 so determined is far less than the fair value of the property of complainant used and useful in the public service.

(2) The method pursued by the Commission in making its determination of the basis for the prescription of temporary rates to be charged by complainant was erroneous, illegal and arbitrary in that it ignored elements that should be considered in arriving at a valid rate base.

(3) The rate of return allowed by the Commission is inadequate and confiscatory and will fail to yield to complainant a fair return upon the fair value of its property devoted to the rendition of its public service.

(4) The return which the Commission allowed complainant in fixing its annual net operating income is less than a fair return upon the fair value of the property of complainant used and useful in the public service, and deprives com-

plainant of its property without just compensation therefor and without due process of law.

(5) The Commission erroneously and illegally failed and refused, in estimating complainant's operating expenses for the purpose of determining allowable operating income, to make any allowances for

(a) rate case expense aggregating \$178,374.50 necessarily incurred and paid by complainant in connection with the employment of engineers, auditors and attorneys incident to the preparation and presentation to the Commission of testimony and evidence necessary to be had by the Commission, a part of which was demanded by it, in a proceeding instituted on its own motion challenging the reasonableness of complainant's rates, and a substantial part of which expense was incurred in connection with the preparation and presentation of testimony and evidence in proceedings before a Federal Statutory Court, as well as the prosecution of said proceedings, wherein a previous order of respondents entered in said rate case was enjoined as unlawful;

(b) increased salary expense of approximately \$20,593, required to be paid by complainant to its officers and employees, as provided in a certain resolution duly passed by its Board of Directors on October 28, 1937.

• (6) The Commission erroneously and illegally failed and refused, in estimating complainant's gross annual revenues for the purpose of determining allowable operating income, to make any allowance for the loss of such revenue which will result from the abandonment of the railway service now rendered by York Railways Company, parent of complainant, in York, Pennsylvania, and environs, a petition for the abandonment of such service having been heretofore filed by said York Railways Company with the respondents.

Twelfth. That in said order, Exhibit A, the Commission erroneously and illegally determined that the proper basis for the prescription of temporary rates is the sum of \$5,250,000; that said sum is far less than the fair value of the property of complainant used and useful in the public service, as will appear from the following:

(1) The reproduction cost new of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of

accounts, excluding working capital and going concern [fol. 11] value, is in excess of \$6,000,000 but erroneously found by the Commission to be only \$5,293,064.

(2) The reproduction cost new less accrued depreciation of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts, excluding working capital and going concern value, is approximately \$5,350,000 but erroneously found by the Commission to be only \$4,737,803.

(3) The original cost of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts, excluding working capital and going concern value, is in excess of \$5,000,000 but erroneously depreciated by the Commission to \$4,094,000.

(4) A fair and reasonable allowance to complainant for working capital is \$164,000 as allowed by the Commission.

(5) A fair and reasonable allowance to complainant for going concern value is not less than \$400,000 but the Commission erroneously made no allowance therefor.

(6) Net additions to complainant's plant and property not included in the foregoing estimates of reproduction and original cost total \$142,851.07 as of September 30, 1937 but the Commission erroneously made no allowance therefor.

Thirteenth. That by said order, Exhibit A, the Commission reduced the annual gross operating revenue of complainant to such amount that its annual net operating income will be far less than that to which it is entitled under the provisions of Section 310 of the Public Utility Law in that, pursuant to sub-paragraph (b) thereof temporary rates established with respect to a public utility not having continuing property records must be sufficient to provide a return of not less than an amount equal to the operating income of such public utility for the year ended December 31, 1935 or any subsequent year that the Commission may select. That complainant does not have continuing property records and is, therefore, lawfully entitled under said Section 310 to a return of not less than an amount equal to its operating income for either the calendar year 1935 or 1936.

That the application of said order, Exhibit A, will reduce the operating income of complainant to an amount far less than its operating income for either 1935 or 1936.

Fourteenth. That by reason of all the foregoing facts, said order, Exhibit A, is unreasonable, arbitrary and confiscatory and deprives complainant of a reasonable or fair return upon the fair value of the property devoted by complainant to the rendition of its public service, in violation of the Constitution of the United States and the Fourteenth Amendment thereto.

Fifteenth. That the provisions of Section 310 (e) of Article III of said Public Utility Law purporting to provide recoupment where a temporary rate has been less than a reasonable rate prescribed in a final order, are wholly inadequate and illusory in that such provisions do not and cannot provide adequate and complete compensation or reimbursement for the confiscation of complainant's property as hereinabove alleged, and do not and cannot prevent said order, Exhibit A, from depriving it of its property without just [fol. 12] compensation therefor and without due process of law, in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto.

Sixteenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, complainant will be deprived of its rights and privileges guaranteed by the Constitution of the United States of America and the Fourteenth Amendment thereto, and will be forced to surrender its constitutional rights and will suffer irreparable injury and damage.

Seventeenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, the complainant will be obliged to comply with the terms and provisions of said order through fear of the severe penalties imposed upon it for non-compliance therewith under the provisions of Sections 1301 and 1302 of Article XIII of the aforementioned Public Utility Law, to wit: the payment of a fine of \$50 for each and every day during which said order is not complied with; that such forced compliance with said order, Exhibit A, will result in the confiscation of the property of complainant, the deprivation of its property without due process of law and

without just compensation therefor, and the denial to complainant of the equal protection of the laws.

Eighteenth. That complainant does not have a plain, adequate, speedy and efficient remedy either at law or in equity in the courts of the Commonwealth of Pennsylvania, because the provisions of Sections 1103 and 1111 deprive complainant of any right to obtain a supersedeas to stay the operation of said order, Exhibit A, on appeal therefrom, or an injunction or restraining order for the purpose of preventing the enforcement of said order, Exhibit A, and the resulting confiscation of complainant's property as hereinabove alleged; that complainant is further deprived of a plain, adequate, speedy and efficient remedy at law or in equity in the courts of the Commonwealth of Pennsylvania by reason of the action of respondents in arbitrarily refusing to enter an order prescribing the permanent rates to be charged by complainant as respondents are authorized and directed to do by the provisions of the Public Utility Law of Pennsylvania.

Nineteenth. That complainant does not have a full, complete and adequate remedy at law.

Wherefore, complainant prays:

(a) That a writ of subpoena issue directed to respondents, commanding them and each of them to appear and answer fully to this bill of complaint, but not under oath, answer under oath being expressly waived.

(b) That respondents, and each of them, individually in their own respective rights and in their official capacities as members of the Pennsylvania Public Utility Commission and their respective successors in office, and all of those acting or claiming to act under their authority or in aid or assistance of them, be enjoined and restrained from in any manner enforcing or attempting to enforce the order of said Commission, Exhibit A; and from instituting or threatening to institute against complainant or any of its officers, directors, servants, agents or employees, any civil or criminal proceedings in any manner or form before any [fol. 13] judge or court of any jurisdiction, based upon any claimed violation by complainant of, or non-compliance with, said order, Exhibit A; and from imposing or attempting to impose upon complainant or any of its officers, di-

rectors; servants, agents, or employees, any penalty for complainant's purported non-compliance with or violation of said order, Exhibit A.

(c) That pending the determination of this suit a temporary injunction be granted forbidding, restraining and enjoining all of the actions on the part of respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(d) That pending the hearing and determination of an application for a temporary injunction as prayed for in paragraph (c) hereof, to be returnable upon order to show cause herein, this Honorable Court grant a temporary restraining order forbidding, restraining and enjoining all of the actions on the part of respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(e) That it be adjudged that the order of said Commission, Exhibit A, is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, and is void and of no force and effect.

(f) That it be adjudged that Section 310 of Article III of said Public Utility Law is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto and is void and of no force and effect.

(g) That complainant have such other and further relief as may be just and proper and equitable in the premises.

And complainant will ever pray, etc.

Dated December 13, 1937.

Edison Light & Power Company, by J. E. Wayne, President, by Walter Biddle Saul, Attorney for Plaintiff, Office and Post Office Address, Packard Building, Philadelphia, Pa. Clarence W. Miles, Baltimore Trust Building, Baltimore, Md.; Morgan S. Kaufman, Mears Building, Scranton, Pa., of Counsel.

[fol. 14] *Duly sworn to by J. E. Wayne. Jurat omitted in printing.*

[fol. 15] EXHIBIT "A" TO BILL OF COMPLAINT

Final Writing

Pennsylvania Public Utility Commission

Complaint Docket No. 11108

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

EDISON LIGHT AND POWER COMPANY

SUPPLEMENTAL REPORT AND ORDER OF THE COMMISSION

By the COMMISSION :

On July 13, 1937, the Commission issued an Interim Report and Order prescribing temporary rates in this proceeding. In that report and order the Commission found that temporary rates should be prescribed to provide a return of 6% upon a rate base of \$5,250,000. The Commission discussed the operating revenues and expenses of the company, and ordered a rate reduction pending final determination. By reason of an opinion of the Pennsylvania Superior Court at *Pennsylvania Power & Light Company v. Public Service Commission*, 193 A. 427, — Pa. Superior Ct. —, rendered July 15, 1937, we issued an Interim Report and Order on July 27, 1937, rescinding our order of July 13, 1937, insofar as it was deemed inconsistent with the cited opinion of the Superior Court. The effect of the July 27, 1937, order was to prescribe a specific schedule of rates in place of those theretofore charged by respondent company, the amount of the ordered reduction and the bases of its computation remaining unchanged. Edison Light and Power Company, respondent, instituted a suit in equity under Section 266 of the United States Judicial Code to prevent the enforcement of the Commission order of July 27, 1937. On October 15, 1937, the Statutory Court, composed of Honorable J. Warren Davis, Circuit Judge, Honorable Albert W. Johnson, District Judge, and Honorable Albert L. Watson, District Judge, enjoined the enforcement of the order, holding that the Commission had insufficiently indicated the bases for its temporary rate findings. Each Judge, in a separate opinion, indicated that he was in sympathy with

speedy relief to consumers from the burden of excessive rates, and that the imposition of temporary rates was a proper and constitutional means of securing such relief. Each opinion also contains suggestions as to the manner in which the Commission should proceed to impose such temporary rates.

As we interpret the opinions, we are required to consider the elements constituting fair value of the property involved, and to discuss these elements, and other pertinent matters such as operating revenues and expenses, in sufficient detail to demonstrate the validity of our conclusions. However, the opinions state that our discussion and consideration need not equal in care, particularity, or thoroughness the treatment to be given the relevant items in arriving at a conclusion as to proper final rates.

We have given careful study to the various suggestions and will, in the following discussion, endeavor to adhere to the principles enunciated by the Court.

Reproduction Cost Estimate:

In an application (A. 33811), which was heard by the Commission in 1935, asking approval of the merger and consolidation of York Railways Company and respondent, into a new corporation to be known as York-Edison Company, the applicant placed in the record an inventory and estimate of the reproduction cost new of the property of the present respondent, and of such cost less accrued depreciation as of June 30, 1934. This inventory and appraisal was made by Day & Zimmermann, Inc., the engineering firm which prepared an inventory and appraisal on behalf of respondent for the purposes of the present case.

The direct estimated reproduction cost of Edison Light and Power Company property as shown by the Day & Zimmermann appraisal as of June 30, 1934, introduced into the present record as Commission Exhibit 17, was \$4,188,348 new, and \$3,733,812 new less accrued depreciation. To this direct cost Day & Zimmermann added certain indirect or overhead costs consisting of preliminary and organization 2%; administrative and legal 2%; engineering and supervision 6%; insurance and taxes during construction 1.5%; interest during construction 6%, and cost of financing 7.5%, or total indirect costs of \$1,133,126 applied to the re-

production cost new estimate, and \$1,010,154 applied to the depreciated cost, or a total indirect cost of approximately 27%. In addition, an allowance of \$161,200 was made for working capital, consisting of cash and materials and supplies.

An engineer for the Commission testified in the present record that, based upon his experience, the total allowance for indirect costs should approximate 18%, divided as follows: Preliminary and organization expenses 1½%; administration, legal and taxes 1½%; engineering and supervision 5%; interest during construction 6%; and cost of financing 3%; the total of these allowances is 17%; but cumulative application of the various percentages will give a sum in dollars equivalent to approximately 18 per cent of the direct cost.

At a hearing held on February 17, 1937, the respondent company through Vice President Seelye of Day & Zimmermann, Inc., submitted of record, as respondent's Exhibit 2, an estimate of the reproduction cost new and depreciated of its property as of November 30, 1936, in the amount of \$5,694,494 new and \$5,004,854 new less accrued depreciation—exclusive of working capital and going concern value—as follows:

[fol.17]	Estimated Reproduction Cost	
	New	Less Accrued Depreciation
Organization	\$68,812	\$68,812
Steam Generating System	1,302,672	1,005,222
Transmission System	697,431	652,319
Distribution System	1,845,067	1,713,879
Utilization System	280,677	248,215
General Property	461,629	404,657
Undistributed Construction Expenditures	1,038,206	911,750
Total	\$5,694,494	\$5,004,854

At a later hearing (March 10, 1937) respondent offered, as its Exhibit 18, a summary of its reproduction cost estimate showing certain adjustments for property not used or

useful in the public service. Its net estimated reproduction cost, exclusive of working capital and going concern value was shown as \$5,572,134 new, and \$4,950,609 depreciated. The summary of this exhibit is:

	Estimated Reproduction Cost New of Useful Property	
	New	Depreciated
Organization	\$67,333	\$67,333
Steam Generating System	1,216,963	973,850
Transmission System	685,296	640,836
Distribution System	1,845,067	1,713,879
Utilization System	280,677	248,215
General Property	460,900	404,567
Undistributed Construction Expenditures:		
Engineering and Superintendence during construction	202,001	179,161
Gen'l Officers' and Clerks' salaries during construction	44,889	39,813
Gen'l Officers' and Clerks' expenses during construction	33,667	29,860
Office Supplies and Expenses during construction	11,222	9,953
Law Expenditures during construction	22,445	19,907
Injuries and Damages during construction	44,889	39,813
Insurance during construction	22,445	19,907
Taxes during construction	44,889	39,813
Interest during construction	298,961	265,614
Cost of Financing	290,490	258,089
Sub-total — Undistributed Construction Expense	\$1,015,898	901,930
Total	\$5,572,134	\$4,950,610

The total overhead items, including organization expenses and undistributed construction expenses, as estimated by

respondent's engineers in relation to the direct costs, are set forth in the following tabulation:

[fol. 18]	New	Depreciated
Direct Costs	\$4,488,903	\$3,981,347
Indirect Costs (exclusive of going concern value and working capital)	1,083,231	969,263
Indirect Costs in percent of direct costs	24.1	24.3

The indirect cost percentages applied, according to respondent's witness, consist of the following allowances:

Organization	1½%
Engineering and Superintendence	4½%
General Officers' and Clerks' Salaries	1%
General Officers' and Clerks' Expenses	¾%
Office Supplies and Expenses	¼%
Law Expenditures	½%
Injuries and Damages	1%
Insurance	½%
Taxes	1%
Interest	6%
Cost of Financing	5½%

It is to be noted that the same engineering firm prepared the estimates for both the merger proceeding and the instant proceeding, although the methods of setting forth the overhead allowances differ in the two appraisals. The Commission engineer followed the method used by respondent's engineer in the merger proceeding.

The chief engineering witness for respondent testified that it is not possible to make a comparison between the specific overhead allowances by the Commission engineer and those set forth by Commission accounts. We will accept for the purposes of this temporary order the view of respondent that such a comparison cannot be made, and will, therefore, compare the total allowances to test the reasonableness thereof.

The estimated direct reproduction cost of useful property as stated by the engineers for respondent as of November 30, 1936, are \$4,488,903 new and \$3,981,347 depreciated. Applying the indirect cost percentages used by the Commis-

sion engineer to these direct costs for the purpose of comparison, we obtain:

	Estimated Reproduction Cost	
	New	Depreciated
Direct Cost	\$4,488,903	\$3,981,347
Indirect Costs:		
Preliminary and Organization— 1½%	67,334	67,334
Administration, Legal & Taxes— 1½%	67,334	59,720
Engineering and Supervision— 5%	224,445	199,067
Sub-total	4,848,016	4,307,468
Interest during construction—6%	290,881	258,448
Sub-total	5,138,897	4,565,916
Cost of Financing—3%	154,167	136,977
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Total direct and indirect cost	\$5,293,064	\$4,702,893
Total indirect cost	804,161	721,546
Indirect cost—percent of direct cost	17.9%	18.1%

[fol. 19] The indirect costs presented by the Commission's witness represent a liberal allowance in the light of recent appellate court decisions in Pennsylvania. In *Chambersburg Gas Co. v. Public Service Commission*, 116 Pa. Superior Ct. 196, (1935) the Court affirmed the Commission allowance of 3% of the cost of property, including overhead construction costs, as the cost of financing. The other overhead costs allowed included 5% for engineering, except upon land, which was allowed at 2%; 1½% for organization and promotion; 1½% for administration, legal expenses and taxes, and 3% for interest during construction. The total was 13%. In *Cheltenham and Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252, (1936) the Court allowed a total of 14.5% of the direct cost of the physical property for overheads including preliminary, or-

ganization, administration, superintendence, legal expense, interest during construction and cost of financing. The 18.1% figure representing the allowance made by the Commission engineer for indirect cost is approximately 3% in excess of the 14.9% allowed in the case of Cheltenham and Abington Sewerage Co v. Public Service Commission. Although the 18.1% figure represents expert judgment, it may be noted that a 6% allowance has been made for interest during construction based upon a two-year construction period. The 3% allowance approved for this item in Chambersburg Gas Co. v. Public Service Commission, supra, was based upon a one-year construction period.

It is our opinion and we find that, for the purpose of temporary rates, a reasonable total percentage allowance for overheads is 19%. This will result in an allowance of \$756,456 for indirect costs.

The addition of the indirect cost allowance of \$756,456 to the direct cost depreciated of \$3,981,347 gives a total \$4,737,803, which we find represents reproduction cost new less accrued depreciation, for the purpose of determining temporary rates.

Original and Book Cost:

Both parties submitted evidence of the original cost of respondent's property, Commission Exhibit 23 reflecting the cost of all property installed from the inception of respondent and its predecessor companies, to June 30, 1936. In addition, the Commission submitted in evidence, as Commission Exhibit 3, a statement of the cost of construction work in progress as of June 30, 1936. Respondent's estimate of original cost is contained in respondent's Exhibit 9 and covers all of the property owned as of November 30, 1936. Respondent also submitted, as its Exhibit 11, a statement showing gross additions and retirements by years from 1887 to December 31, 1936, as abstracted from the books of account of the respondent and predecessor companies, and as adjusted for the elimination of net excess values created in connection with the revaluation of plant and property of predecessor companies. The result thereof will hereinafter be referred to as respondent's estimate of "book cost". The results of the various estimates of

original cost and book cost are summarized in the following tabulation:

[fol. 20] Commission estimate of original cost as of December 31, 1935, exclusive of construction work in progress		\$4,449,125.43
Net additions during year ended December 31, 1936 as shown by 1936 annual report		109,676.01
Construction Work in progress as of December 31, 1936, as shown by 1936 Annual Report		16,666.83
Properties and franchises of 19 non-operating companies		701.46
		<hr/>
Commission estimate of Original Cost of all property as of December 31, 1936		4,576,169.73
Respondent's estimate of book cost as of December 31, 1936		4,578,793.00
Respondent's estimate of original cost as of November 30, 1936		\$5,014,944.00
Deduct admitted error page 997 of testimony		45,700.00
		<hr/>
		\$4,969,244.00

Respondent's estimate of original cost in its Exhibit 9, includes the arbitrary addition of an item of "Discount and Expense (Cost of Financing)" in the amount of \$349,880. Although respondent's witness states that the actual cost of obtaining capital "would be relevant maybe in connection with the original cost of the property," respondent's evidence nowhere indicates that any studies were ever made of such cost. Under the court decisions the actual cost of financing must be shown to support its inclusion in an original cost estimate. See *Galveston Electric Co. v. City of Galveston*, 258 U. S. 388, 397; *Wabash Valley Electric Co. v. Young*, 287 U. S. 488, 500; *Dayton Power and Light Co. v. Public Utilities Commission of Ohio*, 292 U. S. 290; *Minneapolis v. Rand*, 285 Fed. 818; *Cheltenham & Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252. Since no such showing has been made, the item should be excluded from the estimate of original cost.

With this adjustment, the various estimates of original and book cost compare as follows:

Original Cost:

Commission estimate, as of December 31, 1936	\$4,576,169.73
Respondent's estimate, as of November 30, 1936, excluding arbitrary provision for "Discount and Expense (Cost of financing)"	4,619,364.00

Book Cost:

Respondent's estimate, as of December 31, 1936	4,578,793.00
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In none of the foregoing estimates have we excluded any part of the cost of the central generating plant, nor have we made any deduction for donated capital. Deductions for these items will be considered in the final disposition of the case. A consideration of the three stated cost estimates leads us to the conclusion and we find that, for the basis of an order prescribing temporary rates, the original cost of all of respondent's property, before making deductions for any part of the central generating plant, donated capital, or accrued depreciation was \$4,600,000 on December 31, 1936. As hereinbefore set forth, respondent's engineers estimate the accrued depreciation on its property to be equal to about 11% of its estimated reproduction cost new [fol. 21] of the property. Application of this percentage to the \$4,600,000 figure representing original cost of all of the property, results in an amount of \$506,000 to be deducted for accrued depreciation. This deduction gives \$4,094,000 as the original cost of respondent's property less accrued depreciation thereon, as of December 31, 1936. On December 31, 1936, the booked reserve for renewals and replacements, as shown by the 1936 annual report to the Commission, amounted to \$2,231,907. Deduction of this amount from the original cost of \$4,600,000 would show \$2,368,093, as the original cost depreciated of all of the property upon this basis of calculation. However, for the purpose of temporary rates, we find the original cost depreciated to be \$4,094,000.

Going Concern Value

Although the Pennsylvania Superior Court has discussed the item of going concern value in several decisions, the most recent of which are *Scranton-Spring Brook Water Service Company v. Public Service Commission*, 105 Pa. Superior Ct. 203, *Chambersburg Gas Co. v. Public Service Commission*, 116 Pa. Superior Ct. 196, and *Cheltenham and Abington Sewerage Co. v. Public Service Commission*, 122 Pa. Superior Ct. 252, no formula for determination of a proper allowance on this account has been prescribed. Furthermore, none of the decisions requires that a separate and distinct allowance be made for this item.

The decisions of the Federal Courts likewise do not require a separate allowance, nor do they indicate any formula for determination of a proper allowance. The law applicable to this item has been summarized by Mr. Justice Cardozo in *Dayton Power & Light Co. v. Ohio Public Utilities Commission* (1934) 292 U. S. 290, 308, 78 L. ed. 1267, 54 S. Ct. 647, 3 P. U. R. (N. S.) 279, 292, in the following words:

“(a) Objection is made that the going value of the appellant's business should have been included in the base.

“The decisions of this court show what going value means (*Los Angeles Gas & Electric Corp. v. Railroad Commission of California*, supra, p. 313), distinguish it from good will, and hold that upon proof of its existence it may have a place in the base upon which rates are to be computed. The Commission was of opinion that there was here no constituent of property that called for separate appraisal apart from the recognition that had been given it as a contributory factor in other elements of value.

“The appellant is a new company, engaged in business for a few years. The value of its physical assets is less than a million dollars. In the brief term of its existence it professes to have added to that value from \$125,000 to \$140,000 by combining the parts into an organism and causing them to work together. The Commission took the view that whatever increment of value had emerged from these sources was sufficiently reflected in the allowance of the cost of developing new business' and in the appraisal of the physical assets as parts of an assembled whole. A like conclusion has been reached by this court in very similar conditions. *Los Angeles Gas & Electric Corp. v. Railroad Commission*

[fol. 22] of California, *supra*, p. 314. Going value is not something to be read into every balance-sheet as a perfunctory addition. 'It calls for consideration of the history and circumstances of the particular enterprise.' *Los Angeles Gas & Electric Corp. v. Railroad Commission of California*, *supra*, p. 314."

The latest pronouncement of the Federal Supreme Court relative to going concern value is contained in *St. Joseph Stock Yards Co. v. U. S.*, 298 U. S. 38, 62, in the following words of Mr. Chief Justice Hughes:

"*Going concern value*.—Appellant's witness, who testified at length at both hearings, followed an elaborate method involving assumptions and speculations of the sort which fail to furnish a sound basis for computing a separate allowance for that element. Compare *Galveston Electric Co. v. Galveston*, 258 U. S. 388, 394; *Los Angeles Gas Corp. v. Railroad Commission*, *supra*, pp. 314, 318, 319; *Dayton Power & Light Co. v. Public Utilities Comm'n*, 292 U. S. 290, 309; *Columbia Gas & Fuel Co. v. Public Utilities Commission*, 292 U. S. 398, 412."

The opinion of Mr. Chief Justice Hughes affirmed the per curiam decision of a Federal Court in *St. Joseph Stock Yards Co. v. U. S.*, 11 F. Supp. 322, 334, wherein the following discussion appears:..

"**Exclusion of Going Concern Value.**

"The contention is there should have been a separate and distinct allowance for 'going concern' value. The Secretary recognized that there was 'an element' of value in an assembled and established plant doing business and earning money over one not thus advanced (finding 159), but said:

" 'Yet, the very impossibility of finding any reasonable rule or measure wherewith to determine, for rate making purposes, the amount of such value, bespeaks the impropriety of attempting to include in rate making valuations any separate allowances for that purpose. The elaboration which Howson gives to his method does not disguise the fact that in the end it is but a guess. An arbitrary percentage of other values leads to the illogical conclusions that, the more a property costs the greater is its going concern value, even though it may not be earning any net return upon its cost of reproduction new. In actuality, going-con-

cern value is conceived to be the difference between the present fair value to the physical properties of a business, plus its working capital, and its actual net earnings capitalized at the going rate of money. The use of such a measure in rate proceedings would have the effect of destroying the result of the elaborate procedure which is undertaken to avoid using capitalized income as a basis for determination of the reasonableness of that income. This is why a separate allowance for the element of going concern has no place in valuation for rate making purposes. Attempts to substitute other methods have led to the confusing and illogical results which so generally characterize separate allowance to cover going-concern value.

“160. Exclusion from the rate base of such separate allowance is not, however, tantamount to the failure to include therein anything for the going concern element. The very fact that the land used in the business has the value ascribed to it is because of its capacity for use as part of a [fol. 23]. going concern. The cost of reproduction new of structures is not necessarily value, but only such when and as it relates to property used as a part of a going concern. The record in this case shows that it would cost more to reproduce respondent's structures on a desert, without means of transportation of live stock to market, but that, when so reproduced, they would be valueless. This is because it is the going concern element that transmutes cost of reproduction new into value. When respondent's structures are included in the rate base at the cost of reproduction new less depreciation, rather than scrap or junk value, it is because, and only because, they have inherent in them their use in a going, operating business. Thus, in the rate base herein found, there is included a large amount for going-concern value, but such value is so inextricably interwoven with other values that any attempt to segregate it and set it up alone would lead to a conclusion as arbitrary and illogical as usually is found when such attempts are made.”

It is clear from a study of the decisions both of the Pennsylvania and the Federal Courts that, although under some circumstances a separate and specific allowance for going concern value may properly be made, nevertheless such an allowance is not necessary if consideration be given to the element of going concern value in arriving at a determination of fair value for rate making purposes. It is also

clear that a specific allowance for this item is not in accord with the most recent and advanced developments of the theory of rate making.

In the present case, the claim of \$400,000 represents the opinion of a witness for respondent, based upon his consideration of the historical development of the predecessor companies. He admitted that determination of the early lag in earnings was difficult, and that the problem was complicated. He also stated that a lag calculation "produced rather fantastic figures for going value which were far beyond what I consider this company possesses in that respect. In arriving at his fair value figure of \$5,500,000, he impliedly approved the inclusion of going concern value not as a separate item, but as an item to be considered in determination of fair value, stating "in considering the matter of fair value all matters which relate to going value must necessarily be considered at the same time. That is to say, these various elements of value which exist in the property."

We have carefully weighed the matter in the light of the testimony of record and of the court decisions, and we are of the opinion that no separate allowance should be made for going concern value. We will, however, consider this element with others in our determination of fair value.

Donated Capital:

Commission Exhibit 22 shows that, as of June 30, 1936, consumers of respondent had contributed to it a total of \$267,514.68 for the construction of distribution lines and other property. Respondent's Exhibit 13 shows the amount of such donated capital to be \$199,945 as of December 31, 1936. Since we are now considering the prescription of temporary rates, we will not at this time pass upon the correctness of either amount, but will defer such finding [fol. 24] until final determination. It has consistently been the Commission's policy to exclude from any finding of fair value, capital donated by consumers. To allow such capital as a part of a rate base would impose upon consumers the burden of supplying the capital in the first instance, then penalize them in the future by requiring them to pay rates high enough to provide a return on the value of property first constructed at their own expense and to be replaced at their expense. However, for the purpose of temporary rates, we will make no deduction for capital so donated.

Central Generating Plant:

A witness for the Commission presented an exhibit allocating the central generating plant between the steam heating company and the electric company based upon the property used and useful and required in supplying the requirements for the service of the heating company. This allocation is made upon the direct costs of respondent's reproduction cost estimate of November 30, 1936, and before respondent had made certain adjustments in its estimate for property not used or useful.

The direct cost of the steam generating system, as shown in the estimated reproduction cost new, was \$1,302,672. Of this sum \$506,513 was allocated to the steam heating company, and \$796,159 to the electric company. The estimate of the depreciated reproduction cost allocated to the electric company is \$563,933. However in considering temporary rates this item will not be reduced.

A commission witness presented an estimate excluding property used exclusively by York Railways Company in the sum of \$80,999, based upon the direct costs of respondent's reproduction cost estimate of November 30, 1936. Respondent attempted to show that the inclusion of this equipment in its rate base is justified. As this point is in dispute, we will include this item for the purpose of temporary rates.

Working Capital:

The chief engineering witness for the respondent testified that, in his opinion, the company should have a working capital of \$150,000. The Commission chief engineering witness suggested allowance of working capital in the amount of \$164,000. For the purpose of this temporary order, working capital will be allowed in the amount of \$164,000.

Fair Value:

For the purpose of temporary rates we make the following findings relative to original cost, reproduction cost, and allowable working capital:

Original Cost Depreciated	\$4,094,000
Reproduction Cost New, less accrued depreciation	4,737,803
Working Capital	164,000

[fol. 25] Development of tentative rate bases from the foregoing findings would be as follows:

	Original Cost Depreciated	Reproduction Cost Depreciated
Before working capital	\$4,094,000	\$4,737,803
Working Capital	164,000	164,000
	<hr/>	<hr/>
Tentative Rate Bases	4,258,000	4,901,803

Article III, Section 310 (a) of the Public Utility Law, held constitutional by a majority of the Statutory Court, authorizes the Commission to prescribe temporary rates which will yield not less than a 5% return on original cost, less accrued depreciation, which in this case has been tentatively found to be \$4,094,000. However, the instant record, as now constituted, contains evidence relating to the other elements of value, and we will consider them in making a tentative finding of fair value. The weight to be given to reproduction cost or original cost figures must depend upon the prevailing circumstances in each case. In the instant case we have for consideration, original cost less depreciation of \$4,258,000, and depreciation reproduction cost of \$4,901,803, including working capital, the full cost and value of the central generating plant and property built with capital donated by consumers. From these figures, giving due weight to going concern value and the other factors involved, we find and determine that the fair value of respondent's property for the purpose of prescribing temporary rates is \$5,250,000.

It may be incidentally remarked that this value figure closely approximates the fair value estimate of respondent in the amount of \$5,500,000 reduced by a sum representing the difference between the allowable overhead reproduction costs and those claimed by respondent. The overhead reproduction costs used by respondent total \$969,263, whereas those herein allowed by the Commission total \$756,456, showing a difference of \$212,807. If this difference be subtracted from \$5,500,000 a result of \$5,287,193 appears.

Rate of Return:

In attempted support of its claim for a 7½% rate of return, respondent discusses in great detail its relationship with its affiliated public utilities, namely, York Railways

Company, York Steam Heating Company and York Bus Company. Respondent claims that, by virtue of this affiliation, it enjoys substantial benefits and advantages that would not exist if it were entirely independent of the other three companies. Respondent's witness stated that, under ordinary circumstances, a return of 6% would be fair and reasonable for respondent, but urged that the said affiliations resulted in savings in operating expenses which, with certain other items, amounted to about 1½% on the \$5,500,000 claimed as the fair value of the property. He further stated that it was immaterial whether the additional allowance sought was made in the form of an increase in the rate of return or as an addition to the operating expenses, and admitted that the considerations upon which he based the claim for the additional 1½% were more closely related [fol. 26] to operating expenses than to rate of return. It is our opinion that no allowance should be made for non-existent and contingent expenses, either in rate of return or operating expenses, and no such allowance will be included in our tentative computation of the allowable gross operating revenues.

Commission witness McShea submitted extensive testimony and exhibits prepared by him as a result of studies showing contemporary money rates, yields on corporate bonds and preferred stocks, yields on government bonds, and earnings on common stocks of corporations in both regulated and competitive industries. His testimony, which shows generally that the interest cost of money was lower in 1936 and early 1937 than it had been for many years, is uncontradicted by respondent. The details of Mr. McShea's testimony are reflected in Commission Exhibits 32 to 36 inclusive. Respondent made no investigation of interest rates, corporate earnings, or the other important considerations relative to fair return, and we therefore rely upon Mr. McShea's uncontradicted evidence. This evidence tends to show that respondent, upon a conservative basis of capitalization (50% bonds, 25% preferred stock and 25% common stock) could issue bonds and preferred stock at effective interest and dividend rates which, upon the basis of an overall return of 5½% on the tentative fair value of \$5,250,000 would leave attractive earnings on the common stock. However, we will allow a 6% return for the purpose of prescribing temporary rates, and will mod-

ify this allowance upon final determination should such modification appear proper.

Operation and Maintenance Expenses:

The record contains exhibits showing the cost of operation and maintenance during the fourteen years and nine months ended September 30, 1937. The Commission exhibits cover the period from January 1, 1923 to December 31, 1936, whereas respondent's exhibits cover the year and nine months ended September 30, 1937. For the purpose of temporary rates, we will base our allowance upon the operating results in the twelve months ended September 30, 1937, with such adjustments as appear proper at this time. The cost of operation and maintenance in the twelve months ended September 30, 1937, as reflected by respondent's Exhibit 23, were as follows:

	Charges		Credits	Net Charges
	Operation	Maintenance		
Production System	\$118,527	\$15,924	\$96,546	\$37,905
Electricity Purchased	644,560	.....	41,714	602,846
Transmission System	3,990	5,680	.....	9,670
Distribution System	25,426	48,209	.....	73,635
Utilization System	10,480	4,929	.....	15,409
Commercial Department	64,673	.....	.....	64,673
New Business Department	50,927	.....	.....	50,927
General Administrative	78,931	.....	.....	78,931
Other General Expenses	179,258	5,972	.....	185,230
	\$1,176,772	\$80,714	\$138,260	\$1,119,226

[fol. 27] In our final report and order, consideration will be given to the reasonableness and propriety of the various charges included in the foregoing tabulation. However, at this time we will briefly comment upon certain items which appear questionable.

Respondent owns and operates a central generating plant, which is mainly used for the production of steam for sale to an affiliated steam heating company during the steam heating season. In the twelve months ended September 30, 1937, respondent received from the steam heating company the sum of \$96,546 for the steam sold, as shown by the credit appearing in the above table. This steam is being sold at a price of 42½ cents per thousand pounds condensation. Prior to September 1, 1934, the price was 40 cents per thousand pounds, but, when it appeared that

the cost of production to respondent during the first ten months of 1934 was 40 cents per thousand pounds produced, the price to the steam heating company was increased to 42½ cents per thousand pounds. The cost of 40 cents was based on operating and maintenance charges only, and included no provision for return on the investment, depreciation or other charges such as administration and insurance. A Commission engineer made an exhaustive study of this situation, from which it appears that more than \$500,000 of the depreciated reproduction cost of the entire central generating plant was useful for the purpose of steam generation only. Provision for the elements of return, and depreciation applicable to this property would indicate a total cost per thousand pounds produced far in excess of the price of 42½ cents being received from the steam heating company. However, no adjustment will be made for this item, for the purpose of temporary rates.

Another item which appears questionable is the credit of \$41,714, appearing opposite "Electricity Purchased" in the above tabulation. The record contains evidence tending to show that this credit represents the sale of energy to the affiliated York Railways Company at a rate not compensatory to respondent. We will make no adjustment for this item, for the purpose of temporary rates, but will defer decision until the issuance of our order prescribing final rates.

In the item "Other General Expenses" shown in the foregoing tabulation in the amount of \$185,230, is included the sum of \$127,935, representing charges for legal and technical services incident to the instant rate case. This amount should be disallowed in view of respondent's admission that the present rates are producing in excess of a fair return, and its offer of a reduction. Respondent's patrons have been paying excessive rates for many years, and they should not now be required to reimburse respondent for the cost of defending admittedly excessive rates: *Scranton-Spring Brook Water Service Co. v. Public Service Commission*, 119 Pa. Superior Ct. 117; 143, 144.

The extent of respondent's earnings since 1922 is shown by the annual reports to the Commission, which are of record in this case. In the following tabulation, we show the operating revenues, operating income and the operating income capitalized at 6% by years from January 1,

1922, to December 31, 1936, and for the twelve months ended September 30, 1937; adjusted only to add back to [fol. 28] operating income in 1936 and the twelve months ended September 30, 1937, the rate case expenses included by respondent in the operating expenses:

Year	Operating Revenues	Operating Income	Operating Income Capitalized at 6%
1922	\$734,073	\$270,696	\$4,512,000
1923	878,797	285,379	4,756,000
1924	1,015,454	342,060	5,701,000
1925	1,161,109	393,377	6,556,000
1926	1,269,038	532,450	8,874,000
1927	1,545,628	687,962	11,466,000
1928	1,666,849	734,941	12,249,000
1929	1,787,149	715,918	11,932,000
1930	1,941,864	808,294	13,472,000
1931	1,877,206	728,976	12,150,000
1932	1,838,908	723,109	12,052,000
1933	1,818,904	694,820	11,580,000
1934	1,888,101	723,646	12,061,000
1935	1,894,193	681,851	11,364,000
1936	2,020,043	686,735	11,446,000
12 mos. ending 9/30/37*	2,202,329	734,856	12,248,000

* From respondent's Exhibit 19B.

No adjustments were made in the above figures for income, gross receipts and other taxes, on the revenues received by respondent in excess of a fair return. The operating income for the year 1936 is shown above at \$686,735, and is after full allowance for all taxes, including taxes paid on excessive revenues. Proper adjustment for this item would increase the operating income to about \$800,000, which is 6% on \$13,300,000.

Respondent offered testimony and exhibits intended to show the annual cost of payroll increases, cost of pension plan, regulatory expenses, and certain other items which it claims should be added to the experienced cost of operation and maintenance in the twelve months ended September 30, 1937, in order to provide adequate future revenue.

These items are shown by respondent's Exhibit 19, as follows:

1. Rental of Property owned by York Railways Company but used by Edison Light and Power Company	\$18,000
2. Payroll increases made effective during 1937	13,488
3. Pension cost	5,819
4. Proportion of annual-salaries of common administrative personnel of respondent and affiliates paid by respondent and reflected on annual basis	20,593
5. Estimate for rate case expense of Commission and regulatory expense to be assessed by Commission under Section 1201 of Public Utility Law	21,792
Total additional claims, per annum	\$79,692

In considering temporary rates, we will allow as operating expenses, the first three items in the above tabulation. However, in final disposition of the case, we may find that all or a portion thereof should properly be disallowed.

The fourth item, amounting to \$20,593, results from a new policy on the part of respondent regarding services rendered by its officers and employees to affiliated companies. By resolution adopted October 28, 1937, the Board of Directors of respondent company provided that the company should "pay in full the present salaries of all its officers and employees without charging or allocating any part thereof to any affiliate company." The resolution also provided that "as rapidly as feasible" the existing practice of having employees of respondent render services to affiliated companies should be discontinued. It is our opinion that the amount claimed as additional expenses, namely, \$20,593, due to the change of policy, should be disallowed at this time. It appears that the various companies will continue to have their offices at the same location or headquarters, under the management and supervision of the same personnel.

Respondent, in assuming these additional operating expenses, is or may be relieving its less prosperous affiliated companies of their fair share of the cost of administering and conducting the general office which is now and has been occupied and operated during many years, for their mutual

benefit. The resolution of respondent's Board of Directors is vague and indefinite as to the time when the change is to become effective, and we are of opinion that, until the change is actually consummated and its reasonableness demonstrated, the resulting increase in expenses should not be reflected in rates.

The fifth item in the above tabulation, amounting to \$21,792, represents respondent's claim for the cost of the Commission's investigation in this case and the general assessment for its proportionate share of the general regulatory expenses of the Commission. The instant case was instituted early in 1936, under the provisions of The Public Service Company Law, which was superseded by the Public Utility Law, effective June 1, 1937. The former law included no provision for assessment of the costs of investigation or general regulatory expenses against public utilities. Since all of the Commission's detailed studies and investigations in this case were made prior to June 1, 1937, it is evident that the cost thereof cannot, under the present law, be assessed against respondent. Therefore, no allowance should be made for this item of expense. However, the Commission may, and will, assess each public utility for its proportionate share of the cost of general regulation. The extent to which this assessment will affect respondent, has not yet been determined. In this connection, we take judicial cognizance of preliminary studies made by the Commission which indicate that the amount assessable against respondent will not exceed 0.3% of its gross revenues, or approximately \$5,300 annually. Other regulatory expenses of an ordinary character not resulting from the assessment provisions of the Public Utility Law or the prosecution of the present case have been included in the allowance for ordinary operating expenses.

We summarize as follows, our allowances for the costs of operation and maintenance for the purpose of temporary rates:

Cost of operation and maintenance during twelve months ended September 30, 1937, exclusive of \$127,933 for rate-case expenses	\$991,291
Rental of property owned by York Railways Company, but used by respondent	18,000
Payroll increases	13,488
Pension Cost	5,819
General regulatory expenses	5,300
Total operation and maintenance	\$1,033,898

[fol. 30] Taxes:

In the twelve months ended September 30, 1937, respondent's estimated tax liability, set up on the books as a charge to operating expenses, amounted to \$333,650. This charge covered state and federal capital stock taxes, federal and state income taxes, state and local gross receipt taxes, federal energy tax, federal tax on undistributed profits and miscellaneous taxes. Since nearly all of these various kinds of taxes will decrease in amount as respondent's revenues decrease, we have recomputed the tax liability, based upon a reduction of \$435,000 in respondent's gross revenues. In the following tabulation we show a comparison of the amounts charged on the books in the twelve months ended September 30, 1937, with the estimated tax liability as recomputed upon the basis of the \$435,000 reduction in revenue.

Kind of Tax	Charge to Operating Expenses	Adjusted Tax Liability
Federal:		
Income	\$93,779	\$40,000
Undistributed profits	16,366	
Capital Stock	10,034	10,000
Electric Energy	42,437	31,000
State:		
Corporate Loans	555	
Corporate Income	45,485	17,000
Capital Stock	33,000	30,000
Gross Receipts	44,215	36,300
Local Gross Receipts	36,650	31,000
Miscellaneous	11,129	11,100
Totals	\$333,650	\$206,400

For the purpose of temporary rates, we will allow \$206,400 for respondent's total annual tax liability. There are two reasons why we make no allowance for federal tax on undistributed profits; first, the effective imposition of a rate reduction of \$435,000 will reduce the net earnings of respondent below the annual dividend payment on the capital stock as reflected by recent experience, thus leaving no undistributed profits upon which to base such a tax; and, secondly, we do not believe that such a tax, if any is paid, should

be charged as an operating expense. It should be paid out of the allowed return.

Annual Depreciation:

For the purpose of temporary rates, we will allow for annual depreciation, the sum of \$142,531, this being the exact amount charged on the books as an operating expense in the twelve months ended September 30, 1937.

Allowable Operating Revenues.

On the basis of the foregoing findings for temporary rates, we find and determine that the annual operating revenues [fol. 31] of respondent should not exceed the sum of \$1,715,629 as shown by the following tabulation:

6% return on \$5,250,000	\$315,000
Operation and Maintenance	1,033,898
Taxes	206,400
Annual Depreciation	142,531

Allowable Operating Revenues	\$1,697,829
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The actual operating revenues amounted to \$2,202,329 in the twelve months ended September 30, 1937, an excess of \$504,500 over the allowable revenue as herein determined. We have allowed and included in the above tabulation all expenses experienced in the twelve months ended September 30, 1937, (except rate case and extraordinary regulatory expenses). However, we are of the opinion that at this time respondent should be required to file a new tariff designed to reduce the gross revenues in the amount of approximately \$435,000 per annum.

Since the promulgation of our interim report and order of July 27, 1937, the respondent company has filed Supplement No. 4 to Tariff Pa. P. U. C. No. 8, effective January 1, 1938, eliminating rate schedules A and B and making certain other modifications in the rate structure. We will disregard Supplement No. 4, since we are here concerned with the presently effective tariff, and Supplement No. 4 would not become effective until January 1, 1938.

No consumption data are available for tariff schedules P-1; TS; SL; and MCY. Lack of the data mentioned prevents construction of specific rates for the classes of service covered by the specified schedules, and we will there-

fore order respondent to apply a factor of 0.70 to effect a reduction of 30% in consumer's bills rendered under these schedules. Such a reduction will convert the present revenues from the rate schedules to which it is applied to a lower figure substantially in proportion to the over-all reduced revenue found proper; Therefore,

Now, to wit, November 30, 1937, it is ordered: That Edison Light & Power Company, respondent, shall, within ten (10) days' of date of service of this order file a tariff supplement effective upon one (1) day's notice to the public and this Commission, effecting a reduction of approximately \$435,000 in its annual gross operating revenues by the establishment of the following rates or rate adjustment:

Domestic Service: (This schedule shall be made available to domestic consumers now served under schedules RL; A; B; and HC)

Minimum charge per month, for which consumer shall be allowed 11 kwh. 50¢

Next	19 kwh. per month	4¢ per kwh.
Next	30 kwh. per month	3½¢ per kwh.
Next	60 kwh. per month	3¢ per kwh.
Next	80 kwh. per month	2½¢ per kwh.
Over	200 kwh. per month	1½¢ per kwh.

[fols. 32-33] **Commercial Service:** (This schedule shall be made available to commercial consumers now served under schedules GL; A; B; and HC)

Minimum charge per month, for which consumer shall be allowed 11 kwh. 50¢

Next	89 kwh. per month	4¢ per kwh.
Next	200 kwh. per month	3¢ per kwh.
Next	700 kwh. per month	2½¢ per kwh.
Next	1000 kwh. per month	2¢ per kwh.
Over	2000 kwh. per month	1½¢ per kwh.

It is Further Ordered That the following present rate schedules, as contained in Tariff Pa. P. U. C. No. 8, shall be cancelled: RL; A; B; GL; and HC.

It is Further Ordered That respondent company shall apply a factor of 0.70 to all net monthly bills covering energy, and all related billed items including connected load,

demand, power factor and service charges rendered for service after the effective date of the tariff supplement filed in accordance with this report and order, to any consumer billed under the following existing schedules in Tariff Pa. P. U. C. No. 8 which schedules shall be included in the tariff filed pursuant to this order: Tariff Schedules P-1; TS; SL; M; and MCY.

It is Further Ordered That the following schedules of Tariff Pa. P. U. C. No. 8, not hereinabove ordered cancelled or modified, shall remain effective: PR; P-2; P-3; P-5; CBH; AS; OPH; BLI.

Pennsylvania Public Utility Commission (Signed)
D. J. Driscoll, Chairman.

Attest: — — —, Secretary.

[fol. 34] IN UNITED STATES DISTRICT COURT.

[Title omitted]

AFFIDAVIT OF J. E. WAYNE—Filed December 20, 1937

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

J. E. Wayne, being duly sworn, deposes and says:

I am the President of Edison Light & Power Company, the complainant herein. The complainant is a public utility corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the business of generating, transmitting, distributing and selling electric energy for light, heat and power purposes in the City of York, Pennsylvania, and its environs.

On or about July 21, 1937, the complainant was served with a report and order, dated July 13, 1937, promulgated by the Pennsylvania Public Utility Commission, directing the complainant, within ten days after service of said order, to file a tariff supplement effecting a reduction of approximately \$435,000 in its annual gross operating revenue in the manner specified therein.

On or about July 28, 1937, without any prior notice, the complainant was served with a report and order dated July 27, 1937, promulgated by said Commission which by its express provisions superseded, rescinded and was entered in

lien of the order of the Commission dated July 13, 1937. Thereafter, complainant filed a bill in equity against the Commission in a Federal Statutory Court praying that the Commission be enjoined from enforcing the order of July 27, 1937; and on October 15, 1937, the Court issued a permanent injunction restraining the Commission from enforcing said temporary order and the rates set forth therein. On or about December 7, 1937, the complainant was served with a report and order dated November 30, 1937, promulgated by said Commission (a copy of which is annexed to the Bill of Complaint, and marked Exhibit A), prescribing temporary rates to be charged by complainant, identical with those prescribed in the aforesaid order of July 27, 1937, [fol. 35] which was enjoined as aforesaid, and again exacting a reduction of \$435,000 in the gross annual operating revenues of complainant.

The complainant is aggrieved by said order in the respects and for the reasons set forth in the Bill of Complaint herein and for reasons more fully appearing hereinafter, and has therefore commenced or is about to commence a suit in equity for the purpose of enjoining and restraining the enforcement of said order of November 30, 1937.

I make this affidavit in support of the application of the complainant for a temporary restraining order and injunction as prayed for in the Bill of Complaint herein.

• Rate Proceedings Prior to Order Complained of

The Pennsylvania Public Service Commission, the predecessor of the respondent Commission, on January 27, 1936, instituted on its own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates and charges of the complainant for electric service. Thereafter numerous hearings were held before the Commission and its predecessors in office, at which voluminous testimony and exhibits were introduced on behalf of the complainant in proof of the fair value of its property used and useful in the public service and the return thereon which the complainant is entitled to earn, and of the reasonable and necessary allowances required to be made for the operating expenses of complainant in determining such return. Certain testimony and exhibits were likewise introduced on behalf of the Commission. The introduction of all of such evidence was completed on June 23, 1937 and on the same date argument was had on the question of whether or not the

instant case was a proper one for the imposition of temporary rates, the complainant asserting at that time, that there was no reason why a final order should not be entered by the Commission prescribing permanent rates. Notwithstanding these facts, the Commission on July 13, 1937, approximately three weeks after the conclusion of hearings, entered an order directing the complainant to file rate schedules effecting a temporary reduction in annual gross operating revenues of approximately \$435,000. On July 27th, however, the Commission rescinded its last mentioned temporary order and entered another temporary order requiring an identical reduction of approximately \$435,000 in annual gross operating revenues. The complainant several days thereafter filed its bill of complaint in a Federal Statutory Court assigning various errors and illegalities in the order of the Commission and, after hearing, that Court on October 15, 1937, granted a permanent injunction restraining the enforcement of the temporary order of the Commission, and of the rates therein fixed.

Subsequently, the complainant and the Commission, by stipulation, made a part of the record of the rate proceedings certain additional exhibits containing relevant evidence. The complainant thereafter waived the right to file briefs or to argue questions of law involved, again asserting that there was no valid purpose to be served by any order prescribing temporary rather than permanent rates. [fol. 36] Despite the fact that the Commission has at all times been in possession of all the evidence since June 23, 1937, as supplemented thereafter, upon which it might fix, determine and prescribe final and permanent rates, it has unlawfully failed and refused to prescribe such permanent rates.

The Rate Order Complained of

On or about December 7, 1937, complainant was served with a report and order of the Commission dated November 30, 1937, which prescribed temporary rates to be charged by complainant and again exacted a reduction in the gross annual revenues of the complainant in the sum of \$435,000. The rates imposed by this latest order are precisely the same as those attempted to be established by the order of July 27, 1937, which order and the rates fixed thereby were permanently enjoined by the Federal Statutory Court. I am informed by counsel and verily believe and therefore

aver that Sections 1103 and 1111 of the Pennsylvania Public Utility Law prevent a supersedeas from becoming effective pending an appeal from orders of the Commission prescribing temporary rates. The Commission by making the order of November 30, 1937 thus deprived complainant of its right to a judicial review of the provisions of said order, and imposed upon complainant the necessity of filing schedules prescribing unreasonable and confiscatory rates. This action on the part of the Commission, in arbitrarily refusing to enter an order prescribing permanent rates to be charged by the complainant as the Commission is authorized and directed to do by the provisions of the Public Utility Law, is arbitrary, unreasonable, and unlawful.

The Commission's order of November 30, 1937 purports to be made pursuant to the provisions of Section 310 of Article III of the Public Utility Law of the Commonwealth of Pennsylvania. I am advised by counsel and verily believe and therefore aver that said Section 310 is contrary to and in violation of the Constitution of the Commonwealth of Pennsylvania, the Constitution of the United States of America and the Fourteenth Amendment thereto; that the provisions of said Section 310 constitute an unwarranted and unlawful delegation of legislative power to the Commission; and that said provisions further permit the Commission to deprive the complainant and all other public utilities subject to the jurisdiction of the Commission of their property without just compensation therefor and without due process of law, and to deny to the complainant and to said public utilities the right to earn a fair return on the fair value of the property devoted by them to the rendition of their public services; and permit the Commission to discriminate unfairly between such public utilities and to deny to complainant and such other public utilities the equal protection of the laws.

I am further advised by counsel and verily believe and therefore aver that the said order of November 30, 1937 violates the rights guaranteed to the complainant by the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives the complainant of its property without due process of law and without just [fol. 37] compensation therefor and denies to the complainant the equal protection of the laws.

The Commission's order of November 30, 1937 purports to prescribe a temporary reduction in the gross operating

Revenues of the complainant. The order is based upon a finding by the Commission of a rate base which is far less than the fair value of the property of complainant used and useful in the public service, and by the application to such erroneous rate base of a rate of return which is wholly inadequate and which will fail to yield to the complainant a fair return upon the fair value of the property devoted to the rendition of its public service. By the application of this erroneous rate of return to the erroneous rate base, the Commission has limited the return allowed to the complainant, in fixing its allowable net income, to an amount which is far less than a fair return upon the fair value of the complainant's property. Furthermore, the Commission has excluded from the operating expenses of the complainant, in determining its allowable net operating income, any allowances for various actual expenses necessarily incurred by the complainant in the operation of its property and the rendition of its public service. The complainant sells electric light and power to the York Railways Company, parent of the complainant, at an annual profit of \$15,089. The York Railways Company heretofore filed a petition with the Commission seeking authority to abandon its electric railway service. In its determination of said allowable net operating income, the Commission has also failed to make any allowance for the loss of revenue which will be suffered by the complainant as a result of this abandonment.

The order of the Commission requires the filing of a tariff supplement, within ten days from December 7, 1937, effective upon one day's notice, which will bring about a reduction of approximately \$435,000 in complainant's annual gross operating revenues. The so-called "temporary" rate must be continued in effect until a final rate is prescribed by the Commission or until further order of the Commission. The reduction in complainant's annual gross operating revenue is, therefore, temporary in name only. The complainant is required to continue the so-called "temporary" rates prescribed by said order of November 30, 1937 in force in the same manner as a final rate for an indefinite and indeterminate period of time. Consequently, for all practical purposes, the temporary rate is a final rate, and the confiscation of the complainant's property and the unjust discrimination caused by said order of November 30, 1937 is a final and permanent confiscation and discrimination for which no adequate remedy is provided by the Commission or by the

Pennsylvania Public Utility Law, or any other law of the Commonwealth.

Fair Value of Property

In the said order of November 30, 1937, the Commission erroneously and illegally determined that the proper basis for the prescription of temporary rates is the sum of \$5,250,000. Said sum is far less than the fair value of the property devoted by complainant to the rendition of its public service. The determination by the Commission is purely [fol. 38] arbitrary and is in no respect supported by any substantial evidence upon which such a finding could be based.

As more fully appears by the annexed affidavit of Theodore E. Seelye, the fair value of the property devoted by the complainant to the rendition of its public service is greatly in excess of said sum of \$5,250,000, and indeed is at least \$5,500,000. No other or lesser determination of such fair value could have been made upon the basis of the evidence before the Commission except by disregarding in whole or in part one or more of the essential elements which must and should be considered in arriving at an estimate of fair value.

The testimony and exhibits introduced in evidence on behalf of the complainant in the proceeding before the Commission demonstrate:

(a) The reproduction cost new of the property of the complainant used and useful in the public service, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts by excluding working capital and going concern value, is in excess of \$6,000,000:

(b) Said reproduction cost new less accrued depreciation is approximately \$5,350,000;

(c) The original cost of said property including property embraced within the general overhead account as prescribed by the Commission's Classification of Accounts, but excluding working capital and going concern value, is in excess of \$5,000,000.

(d) A fair and reasonable allowance for working capital is \$164,000;

(e) A fair and reasonable allowance for going concern value is not less than \$400,000; and

(f) The net additions to plaintiff's plant and property not included in the foregoing estimates of reproduction and original cost total approximately \$142,851.07 as of September 30, 1937.

Upon the basis of this evidence, and taking into consideration each of the elements of value set forth above, it is impossible to arrive at an estimate of fair value of such property of the complainant of less than a sum of \$5,500,000. In fact, by considering only the estimated original cost of such property (approximately \$5,000,000), which is the lowest cost figure above set forth, and giving due consideration to the allowances which must be made for working capital and going concern value (\$164,000 and \$400,000 respectively), a finding of fair value of at least \$5,550,000 is inescapable. By taking into consideration the reproduction cost new less accrued depreciation of such property in addition to reasonable allowances for working capital and going concern value, the foregoing estimate of fair value is increased. In arriving at a rate base of \$5,250,000, therefore, the Commission must have excluded from consideration one or more of the essential elements of value above set forth.

[fol. 39]

Rate of Return

In the order of November 30, 1937, the Commission required the reduction of the annual gross operating revenue of the complainant to such an amount that its annual operating income would be far less than that to which it is entitled even under the provisions of Section 310 of the Public Utility Law. Subparagraph (b) thereof requires that temporary rates established with respect to a public utility not having continuing property records must be sufficient to provide a return of not less than an amount equal to the operating income of such public utility for the year ended December 31, 1935, or any subsequent year that the Commission may select. Complainant does not have continuing property records, and is therefore, under said law, entitled to a return of not less than an amount equal to its operating income for either the calendar year 1935 or 1936. The application by the Commission of a rate of return of 6% to its determined rate base of \$5,250,000 in determining allowable return of the complainant will reduce the oper-

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ating income of the complainant to an amount far less than its operating income for either 1935 or 1936.

The rate of return allowed by the Commission is inadequate and confiscatory and will fail to yield to the complainant a fair return upon the fair value of the property devoted to the rendition of its public service. The return which the Commission allowed the complainant in fixing its annual operating income is less than a fair return upon the fair value of its property used and useful in the public service, and deprives complainant of its property without just compensation therefor and without due process of law.

Operating Expenses

In the order of November 30, 1937 the Commission excluded and failed to take into consideration certain expenses of the complainant necessarily incurred by it in the rendition of its public service.

The Commission specifically excluded from operating expenses of complainant any allowance for rate case expense necessarily incurred and paid by complainant in connection with the employment of engineers, auditors and attorneys incident to the preparation and presentation to the Commission of testimony and evidence necessary to be had by the Commission, and a part of which was demanded by it, in a proceeding instituted on its own motion challenging the reasonableness of complainant's rates, and a substantial part of which expense was incurred in connection with the preparation and presentation of testimony and evidence in proceedings before a Federal Statutory Court, and the prosecution of said proceedings, wherein a previous order of the Commission entered in said rate case was enjoined as unlawful. These expenses incurred and paid by complainant amounted in the aggregate to the sum of \$178,374.50. All of them were necessarily incurred and the amount thereof was and is in all respects reasonable. The Commission further neglected to make any allowance in complainant's operating expenses for increased salary expense necessary to be paid by complainant in the sum of \$20,593, to its officers and employees, as provided in a certain resolution duly adopted by its Board of Directors on October 28, 1937.

[Vol. 40]

Recoupment

The provisions of Section 310 (e) of Article III of said Public Utility Law do not and cannot provide adequate and

complete compensation or recoupment for the confiscation of the property of the complainant, in that under its provisions, if the rates finally determined are in excess of those provided by the temporary order, the recoupment by the complainant is limited to the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.

In determining the fair return on the fair value of the property, many elements—tangible and intangible—must be taken into consideration, and allowances made in order to restore complainant to the position which would have obtained if the basis upon which the rate of return was prescribed was a fair return on the fair value of the property used and useful in the rendition of its public service. Section 310 (e) does not afford complainant reasonable certainty of the recapture of the amount to which it is entitled. The section makes no allowance for the loss of the use of the money which complainant is entitled to earn during the time the temporary rate is in effect, nor any allowance for economic changes, or losses due to inability to attract capital.

The management of the complainant would be severely handicapped in its operations due to the uncertainties incident to a temporary rate, because of its inability to budget its income or expenditures, or to incur commitments to effect the proper and economical operation of its business, or to make extensions and betterments of its facilities or to raise the necessary funds.

By the operation of a temporary rate which fails to provide a fair return on the fair value of the property used and useful in the public service, the complainant is also deprived of the funds necessary to operate its property in an economical manner, is subject to financial embarrassment, impairment of credit, and loss in investment, none of which can be recovered by complainant by the method set forth in said Public Utility Law.

Federal, State and municipal taxes to which your complainant is subject are constantly increasing, but no consideration is given to this by Section 310 of said Public Utility Act, or in said order.

Other Related Facts

All of the outstanding capital stock of complainant is owned by York Railways Company, a Pennsylvania corporation, to which complainant is also indebted in the sum of \$1,069,008.47. Said York Railways Company is engaged in the operation of a street railway system in the City of York, Pennsylvania, and environs, but recently filed with the Commission an application to completely abandon its service.

On November 30, 1937, York Railways Company filed in the United States District Court for the Eastern District [fol. 41] of Pennsylvania its petition for reorganization pursuant to the provisions of Section 77B of the Federal Bankruptcy Act, as amended. On the same date said Court entered a decree assuming exclusive jurisdiction of the cause and of the property, business and assets of the debtor corporation.

The enforcement of the order of the Commission complained of herein would greatly diminish the value of the outstanding capital stock of complainant and imperil the payment by complainant to York Railways Company of the aforementioned indebtedness and may frustrate or render impossible the consummation of any just and equitable plan of reorganization. The aforesaid capital stock and debt of complainant constitute the principal assets of said York Railways Company.

The Injunction Prayed for

There can be no doubt that the effect of the order complained of is to confiscate the complainant's property and deprive it of the right to earn a fair return on the fair value thereof.

In such circumstances compliance with these orders would be incompatible with the rendition of the complainant's public service. But the alternative to compliance is the infliction of the severe penalties prescribed by the Public Utility Law. Therefore it is necessary for the complainant to seek relief in the courts, and to protect itself by an application for an injunction.

Wherefore, deponent prays that a temporary restraining order and injunction be granted as prayed for in the Bill of Complaint herein.

J. E. Wayne.

Sworn to before me this 17th day of December, 1937.
 L. C. Sturtevant, Notary Public. My Commission
 Expires, Feb. 26, 1939. (Seal.)

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF THEODORE E. SEELYE—Filed December 20, 1937

COMMONWEALTH OF PENNSYLVANIA,
 County of Philadelphia, ss:

Theodore E. Seelye, being duly sworn, deposes and says:

Experience and Qualifications of Day & Zimmermann, Inc.

I am vice president of Day & Zimmermann, Inc., an engineering company consisting of a group of consulting engineers specializing in matters relating to the business and operations of public utility corporations and investigations with respect to the value of the properties and the reasonableness of the rates of such companies. Day & Zimmermann, Inc. has been in existence for thirty-five years and has performed professional services incident to matters of the above character in all parts of the United States and numerous foreign countries. The company has made appraisals of public utility properties amounting to several billions of dollars, and the engineers and accountants associated with its staff have appeared as witnesses before regulatory commissions in many states of the United States and in courts in various Federal jurisdictions.

Experience and Qualifications of Affiant

I have been for the past four years vice president of Day & Zimmermann, Inc., and during that time have testified before various state regulatory bodies and in numerous courts. I have been engaged in matters of rate litigation and valuations concerning the Public Service Company of Northern Illinois, Western United Gas & Electric Company, Commonwealth Edison Company, Syracuse Lighting Company, Harrisburg Railways Company, Cono-

wingo Power Company, and various other public service corporations, and have had occasion to testify in the Federal Courts in connection with proceedings relating to the reorganization of corporations under Section 77B of the National Bankruptcy Act. In addition thereto I have, during my association with Day & Zimmerman, Inc., prepared reports concerning the operations and business of numerous public utility and industrial companies and have supervised the preparation of appraisals of the properties of such companies.

Prior to my present affiliation, I was vice president of Gannett, Seelye & Fleming, Inc. for a period of eighteen years. The business of that company was essentially similar to that of the company with which I am now associated. During the time I was with Gannett, Seelye & Fleming, Inc. in an executive capacity, that corporation owned and operated public utility properties in sixteen states of the United States, as well as in Argentine, Brazil, Chile, and England. In the course of my executive duties with numerous companies owning such properties, I was charged with the control and supervision of matters relating to their management and financing.

Prior to the date when I became associated with Gannett, Seelye & Fleming, Inc. I was Division Engineer of the Water Supply Commission of Pennsylvania and in charge of the preparation of engineering standards with respect to the design and construction of dams in the State of Pennsylvania.

Prior to that I was hydraulic designing engineer for Electric Bond & Share Company.

During the war I was in the Service and attached to the United States Engineering Corps, and subsequent thereto was in charge of the appraisal of war damages to the transportation systems of Belgium including railways, navigation canals and harbors. In the performance of my duties in that connection I was under the War Damages Board of the American Commission to Negotiate Peace, and the amount of the damages above mentioned approximated a total of Three Billion Dollars.

I am at present a member of the American Society of Civil Engineers.

Character and Scope of Investigation of Properties and Business of Complainant

Day & Zimmermann, Inc. was employed to make an engineering and accounting investigation for the purposes of determining (a) the estimated original cost of the property of the complainant; (b) the estimated reproduction cost new, and reproduction cost new less accrued depreciation of the property of the complainant; (c) an analysis of the operating revenues and expenses of the complainant; (d) the estimated fair value of the property of the complainant used and useful in the rendition of its public service; and (e) the rate of return to which the complainant is properly entitled to earn on the basis of its operations in conjunction with its affiliates.

Day & Zimmermann, Inc. was retained to make the aforementioned investigation in order that complainant might have available the necessary exhibits, documents, data and testimony to present to the Pennsylvania Public Utility Commission in the proceedings instituted by the latter challenging the reasonableness of the rates of complainant, and in which proceedings an order was entered on November [fol. 44] 30, 1937, calling for a reduction in its gross annual revenues in the amount of \$435,000.

The investigation necessitated the use of the services of various members of the organization of Day & Zimmermann, Inc. but all of their work was done under my direct supervision. An analysis of the business, properties and affairs of the complainant continued over a period of approximately eight months and required the services of approximately twenty members of our staff.

Fair Value of Property of Complainant Used and Useful in the Public Service

Our estimate of the reproduction cost new of the property of complainant used and useful in the public service as of November 30, 1936, was \$5,572,134, and the reproduction cost less accrued depreciation of such property, as of the same date, was \$4,950,609. Our inventory of such property was made by a physical examination and count in the field of the actual units of property in place and for the purposes of the estimate of the aforementioned reproduction cost new and depreciated, we classified all property in

accordance with its appropriate account number or classification as designated by the Uniform Classification of Accounts prescribed by the Public Utility Commission. The last mentioned figures as to the reproduction cost new and depreciated of the property of complainant include only the physical property of the company devoted to the rendition of its public service and the general overheads recognized by the aforementioned Uniform Classification of Accounts, and do not include therein any allowance for working capital and what is commonly denominated as going concern value.

In arriving at the aforementioned estimates, we determined the reproduction cost of the physical property as of about November 30th, 1936 by obtaining quotations from manufacturers of and dealers in the actual materials required to reproduce the given property, and, with respect to labor, adopted the prevailing rates paid to labor in the City of York of the required character or degree of skill. In inviting quotations or bids from manufacturers and dealers, the latter were requested to submit the same on the basis of actual competitive prevailing market prices and to allow the benefit of any discount to which complainant would be entitled by virtue of the fact that it purchased in quantity amounts.

To the direct costs of the property as above described, we added the general overheads described in the Uniform Classification of Accounts of the Commission. These overheads represent what might be described as owner's costs, as opposed to the direct costs above enumerated. By the term "owner's costs" I mean such costs as would be incurred by the owner directly in building a public utility system, as distinguished from costs required to be paid by the owner to the contractor, who erects the structures and puts the various units of physical property in place. Among such owner's costs are organization expense, interest during construction, administrative, legal and kindred items. [fol. 45] In the first instance, our estimate of the reproduction cost new and depreciated was predicated on prices prevailing as of November 30, 1936, but subsequently such estimate was translated into prices prevailing on or about June 1, 1937. This was done in order to show the extent to which such reproduction cost estimate, as first determined, had been affected by the differential in prices between No-

vember 30, 1936 and a date coincident with the termination of the aforementioned rate proceedings. Such a study showed that between November 30, 1936 and on or about June 1, 1937, the estimated reproduction cost new of the property of complainant increased to \$6,019,832. We further found that the estimated reproduction cost less accrued depreciation of the property of complainant as on or about June 1, 1937, was approximately \$5,350,000, as compared to \$4,950,609 as of November 30, 1936.

The Commission, in its order of November 30, 1937, in making its determination of the reproduction cost new of the property of complainant, accepted the direct costs as contained in the estimate of Day & Zimmermann, Inc., but has substituted substantially the general overheads suggested by a member of its Engineering Bureau in his testimony in the rate proceedings. In support of this conclusion, the Commission referred to two opinions of the Superior Court of Pennsylvania. The record of the proceedings before the Commission discloses that the Commission's witness testified that he had made no inspection of the property of complainant nor formed any independent opinion as to its value. In my opinion, appropriate allowances for general overheads can only be determined in relation to the value of the physical property in question and the circumstances incident to its construction. The aforementioned court opinions referred to by the Commission relate to sewer and gas properties of relatively small value and, in my opinion, the overheads which may be properly allowable in such instances, have no relation to those proper with respect to the electric property of complainant.

The reproduction cost estimates above described are based on an inventory of complainant's property as it existed on November 30th, 1936. According to complainant's books, net additions to its property from that date to September 30, 1937 amounted to \$142,851.07.

In determining the depreciation to be applied to the estimate of reproduction cost new, we arrived at the same as a result of a personal inspection of the various units of property by a number of our expert representatives and engineers whose past experience and qualifications peculiarly fitted them to make such a determination. Those representatives, in forming their respective judgments as to the amount of depreciation to be so applied, considered the physical condition of the particular units of property, the ap-

proximate dates of installation and the manner in which the same had been maintained. In addition to the aforementioned factors, the said representatives further considered the degree of obsolescence and the adequacy or inadequacy of each of the particular units of property.

Our estimate of the original cost of the property of complainant used and useful in its public service as of November 30, 1936 was \$4,969,000, and according to the books of the [fol. 46] company, this amount would be increased by the aforementioned net additions from November 30, 1936 to June 30, 1937 in the sum of \$142,851.07. For the purpose of determining our estimate of original cost, we adopted the actual costs of materials and labor experienced by the company as of the respective dates of installation and applied the same to the inventory of complainant's property as of November 30, 1936. In such instances where the books failed to disclose such actually experienced costs, we applied prices of materials prevailing as of the particular dates of installation and prevailing costs of labor in York, Pennsylvania, as of the date of such installations.

In its above mentioned order, the Commission, in making its determination of the original cost of the property of complainant, accepted the estimate of Day & Zimmermann, Inc., less an item therein in the sum of \$349,880 for cost of financing. The Commission then deducted the sum of \$506,000, representing purported depreciation.

The Commission stated as its reason for eliminating the aforementioned item of cost of financing that "respondent's evidence nowhere indicates that any studies were ever made of such cost". This is not the fact. Our estimate for this item was based, among other things, upon a study of complainant's experience so far as existing records permitted. Reference to Company Exhibit No. 1, which includes a chart portraying the cost of money experienced by York Railways Company the parent of complainant, from 1909 to 1925, and the distribution of the proceeds realized from the sale of its securities, demonstrates that \$2,407,175 was realized from the sale of bonds in the principal amount of \$2,706,000, and that the aggregate discount was hence \$298,825. It is therefore apparent that the experienced cost of financing of complainant's parent over the period in question and for the securities mentioned was something in excess of 11%, or approximately 31½% in excess of our estimate of the cost of financing included in our original cost estimate.

Said exhibit further shows that of the aforementioned proceeds of \$2,407,000, the sum of \$1,027,000 was expended for construction of the property of complainant.

In my opinion, the cost of financing of complainant, had it been required to raise its necessary capital requirements through the public sale of securities, would have been at least equivalent to that actually experienced by its parent in raising funds for the complainant. This opinion is based upon the fact that during the years mentioned above, the parent company was a prosperous corporation with a far better credit standing than that of complainant, and during the earlier years its business was less speculative in character than that of complainant.

We made no attempt to depreciate the original cost of the property of complainant. Because such cost is mere history, and represents the actual investment made by complainant, it is not subject to depreciation; for even though the property should ultimately disappear, the amount originally expended to create it would remain the same. Hence, in my opinion, there is no computation that can be made which would indicate that the amount of the investment is at any time less than that originally put into the property. In [fol. 47] attempting to make such a computation, however, the Commission applied a percentage to the original cost estimate of Day & Zimmermann, Inc., equal to the average of depreciation as determined in the latter's reproduction cost estimate. Reference to Company Exhibit No. 2, containing the estimates of Day & Zimmermann, Inc., of the reproduction cost new and depreciated of the property of complainant, will disclose that the accrued depreciation amounted to \$621,524, which happened to be 11% of the estimated reproduction cost new. This percentage was merely the weighted average of the depreciation as determined for the various units of property. The Commission, for the purpose of determining the so-called depreciation of original cost, deducted from such cost a sum equivalent to 11% thereof. Such a computation is, in my opinion, erroneous not only because original cost cannot be depreciated, but for the further reason that the property of complainant was built over a long period of time at various price levels. The accrued depreciation for the reproduction cost which produced the weighted average of 11% was, on the other hand, based upon an established price level and hence the

use of that percentage in connection with original cost is, in my opinion, fallacious.

By way of illustration of this erroneous computation, property embraced within two account classifications "General Office Structures" included in Account No. 278, and "Other General Structures" in Account No. 279, may be taken as examples. The weighted average depreciation for the property in these two accounts in our estimate of reproduction cost new is 12.3%. If we apply the same percentages of depreciation, forming a part of the weighted average, to the same two accounts in the original cost estimate, the weighted average of depreciation would become 13.5%, thus demonstrating the fallacy of the Commission's application of the percentages of depreciation derived in connection with reproduction cost estimates, to original cost.* If the comparison had been based on individual units of prop-

* It will be noted from the following computation that if the percentages of depreciation derived from the relation of the amounts of accrued depreciation to the amounts of reproduction cost new of both accounts are applied to the amounts of original cost in both accounts, the resulting product of so-called depreciated original cost aggregates a sum equal to 13.5% of the original cost of the property in the accounts, whereas the weighted average of actually accrued depreciation, applying to the reproduction cost new, is only 12.3%.

	Reproduction Cost New ¹	Accrued Depreciation ¹	Percentage of Depreciation
Acct. 278	110,505	16,576	15.
Acct. 279	62,378	4,783	7.6
Total	173,083	21,359	12.3

	Original Cost ²	Percentage of Depreciation	Accrued Depreciation
Acct. 278	93,724	15.	14,054
Acct. 279	24,121	7.6	1,833
Total	117,845	13.5	15,887

¹ As appears by Company Exhibit No. 8.

² As appears by Company Exhibit No. 9.

erty instead of whole accounts, the disparity would be even greater.

[fols. 48-49] In our further conception of the fair value of the property of Edison Company, we concluded that the going concern value of the company was not less than \$400,000. Among the factors considered in reaching this conclusion were (a) the character of the territory served by the company, including the wide diversity of industries represented therein; (b) the sound economic record of the territory served, as indicated by its complete lack of bank failures during the recent economic depression, evidencing the character of the population, their well-being and the ability of the territory to carry on under adverse circumstances; (c) the ability of the company to earn a reasonable return under low rates; (d) the efficiency of the management of the company as indicated by the condition of its property and the high character of its service; (e) an adequate available power supply; and (f) the sound capital structure of the company as indicated by its low capitalization and the fact that it has no funded debt.

After a further consideration of the aforementioned elements of fair value, that is to say, the original cost of the property of Edison Company, the reproduction cost new of such property, the depreciated reproduction cost of such property, its necessary working capital and its going concern value, we concluded that the fair value of the property of the Edison Company used and useful in the public service was not less than \$5,500,000.

Theodore E. Seelye.

Sworn to before me this 17th day of December, 1937.

L. C. Sturtevant, Notary Public. My Commission Expires Feb. 26, 1939. (Seal.)

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER TO BILL OF COMPLAINT—Filed January 12, 1938

Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald Livingston, individually and as constituting the Pennsylvania Public Utility Commis-

sion, respondents, by Edward Knuff, Esq., and Samuel Graff Miller, Esq., Attorneys for respondents, for their answer to the bill of complaint herein respectfully show to the Court and allege:

First. The allegations of the first paragraph of the bill of complaint are admitted.

Second. The allegations and statements of the second paragraph of the bill of complaint are admitted.

Third. The allegations on information and belief of the third paragraph of the bill of complaint are admitted, excepting the allegation respecting respondent Guy K. Bard. It is averred, that said respondent Guy K. Bard is a resident of the Borough of Denver in the Eastern District of Pennsylvania.

Fourth. The allegations of the fourth paragraph of the bill of complaint are admitted.

Fifth. The allegations of the fifth paragraph of the bill of complaint are neither admitted nor denied, respondents having no information permitting admission or denial. If the said allegations are deemed material, respondents ask proof thereof.

[fol. 51] Sixth. The allegations of the sixth paragraph of the bill of complaint are admitted, insofar as they involve statements of fact.

It is denied that the issuance of the supplemental report and order dated November 30, 1937, violates the spirit or intent of Section 310 of the Public Utility Law, and, on the contrary, it is averred that the said supplemental report and order entirely conforms to the letter, spirit and intent of said Section 310.

It is denied that the action of respondents in not entering a final order establishing permanent rates is arbitrary and unreasonable, and, on the contrary, it is averred that said action is proper and reasonable, since adequate consideration of the many and complicated issues involved requires a considerable period of time, proper consideration of the changed conditions revealed by the additional exhibits made part of the record by stipulation on November 15, 1937, does not permit the issuance of a final order establishing permanent rates, and the consumers of complainant should not be deprived of the benefit of reasonable reductions in rates,

pending proper consideration and determination of permanent rates.

It is denied that the order of November 30, 1937, attached to the bill of complaint as Exhibit "A" is arbitrary, unreasonable or unlawful, and, on the contrary, it is averred that, the said order is proper, fair, reasonable and lawful.

Seventh. The allegations of the seventh paragraph of the bill of complaint to the effect that the provisions of Section 310 of Article III of the Public Utility Law are contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto are denied.

(1) Sub-paragraph (1) of the seventh paragraph of the bill of complaint alleges that the cited section purports to empower the Commission to fix, determine and prescribe temporary rates to be charged by public utilities, which rates will not permit said public utilities to earn a fair return on the fair value of their property used and useful in the public service. The conclusion is drawn that thereby complainant and all other public utilities are deprived of their property without just compensation therefor, and without due process of law.

In answer thereto the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which the respondents deny, and to the extent that such allegations may be deemed matters of fact, the respondents deny the same.

(2) It is denied that, as alleged in sub-paragraph (2) of the seventh paragraph of the bill of complaint, paragraphs [fol. 52] (a) and (b) of the said Section 310 of the Public Utility Law purport to empower the Commission to fix, determine, or prescribe temporary rates by alternative methods and upon alternative bases which will discriminate unfairly between public utilities. The conclusion is drawn that thereby complainant and all other public utilities are denied the equal protection of the laws.

In answer thereto the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which the respondents deny, and to the extent that such allegations may be deemed matters of fact, the respondents deny the same. In further answer the respondents aver that paragraph (b) of Section 310 of the Public Utility Law is not here involved in any manner, since the respondents, in issuing the temporary rate order here

involved did not proceed under said paragraph (b) but under paragraphs (a), (c) and (e) of said Section.

(3) It is alleged in sub-paragraph (3) of the seventh paragraph of the bill of complaint that paragraph (c) of Section 310 of the Public Utility Law purports to empower the Commission to fix, determine, prescribe and change temporary rates every month or at any other interval. The conclusion is drawn that thereby complainant and all other public utilities are denied the right to a fixed return and prevented from establishing a definite policy with respect to their financial affairs and the conduct of their businesses and operations in an orderly and efficient manner:

In answer thereto, the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which the respondents deny, and to the extent that such allegations may be deemed matters of fact, respondents deny the same.

It is further alleged in sub-paragraph (3) of the seventh paragraph of the bill of complaint that paragraph (c) of Section 310 of the Public Utility Law fails to provide for notice and hearing to be given to public utilities with respect to the determination, prescription or change of temporary rates. The conclusion is drawn that thereby the Commission is permitted to deprive complainant and all other public utilities of their property without just compensation therefor and without due process of law.

In answer thereto the respondents aver that the foregoing allegations are conclusions of law or matters of opinion, not of fact, the accuracy of which respondents deny, and to the extent that such allegations may be deemed matters of fact, the respondents deny the same.

[fol. 53] In further answer thereto respondents aver that Section 310 (c) of the Public Utility Law, as appears by Exhibit "A" attached hereto provides that "The Commission may, in the manner hereinbefore set forth, fix, determine and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the Commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined and prescribed."

It is further averred in answer that the above quoted paragraph provides that temporary rates may be fixed, deter-

mined, or prescribed only "in the manner hereinbefore set forth," and, since both of the preceding paragraphs of Section 310, to wit, paragraphs (a) and (b), as appears by Exhibit "A" attached hereto, specify that reasonable notice and hearing must precede prescription of temporary rates, reasonable notice and hearing are necessary under Section 310(c).

It is further averred in answer that the said requirement of reasonable notice and hearing was fully observed and complied with prior to the issuance of the Supplemental Report and Order of November 30, 1937.

(4) It is denied that the allegations of sub-paragraph (4) of the seventh paragraph of the bill of complaint are relevant. The Commission, in issuing the supplemental temporary rate order here involved, did not proceed under the provisions of paragraph (d) of Section 310 of the Public Utility Law. Hence, that paragraph of Section 310 providing for the prescription of temporary rates is not involved in any manner. If any of the allegations of sub-paragraph (4) of the seventh paragraph of the bill of complaint are deemed relevant or material herein, such allegations are hereby denied.

(5) The allegations of sub-paragraph (5) of the seventh paragraph of the bill of complaint, to the effect that the provisions of paragraph (e) of Section 310 of the Public Utility Law do not provide proper compensation for possible loss to the public utility occasioned by the prescription of temporary rates, are denied. On the contrary, it is averred that Section 310 (e) of the Public Utility Law, as appears from Exhibit "A," attached hereto, affords the complainant, upon final determination of the rate proceeding, adequate and complete compensation or reimbursement in case the said temporary rates so fixed by the Commission are too low.

It is further averred that, in view of these specific and clear provisions for recoupment of any possible loss which [fol. 54] may be suffered by reason of the imposition of temporary rates, there can be no tenable claim that confiscation of the property of complainant or unconstitutional deprivation of such property will result.

Eighth. The allegations of the eighth paragraph of the bill of complaint are denied, and it is averred that paragraphs (b) and (d) of Section 310 of the Public Utility Law

are not involved in this proceeding, and therefore the allegations contained in the eighth paragraph of the bill of complaint, with reference to the said paragraph, are irrelevant and immaterial in this proceeding.

Ninth. The allegations of the ninth paragraph of the bill of complaint are denied. On the contrary, it is averred that the order here involved is supported by sufficient evidence as will more fully appear in the eleventh paragraph of this answer.

Tenth. The allegations of the tenth paragraph of the bill of complaint are denied for reasons appearing in the eleventh paragraph of this answer.

Eleventh. The allegations of the eleventh paragraph of the bill of complaint are denied. Respondents make specific answer to the said allegations as follows:

(1) It is denied as alleged in sub-paragraph (1) of the eleventh paragraph of the bill of complaint that the amount of \$5,250,000 taken by the Commission as a basis for computation of allowable temporary rates is arbitrary, confiscatory, unreasonable, illegal or unsupported by the evidence. On the contrary it is averred that the computation of allowable temporary rates upon this basis is supported by the evidence, and is just and reasonable and permits complainant to earn a proper and fair return upon the fair value of its used and useful property.

(2) The allegations of sub-paragraph 2 of the eleventh paragraph of the bill of complaint are denied and, on the contrary, it is averred that the method used by the respondents in making their determination of the basis for the prescription of temporary rates to be charged by complainant was not erroneous, illegal and arbitrary, but included all the elements that properly should be considered in arriving at a valid rate base.

(3) The allegations of sub-paragraph (3) of the eleventh paragraph of the bill of complaint are denied and, on the contrary, it is averred that the 6% rate of return allowed by the respondents is adequate and proper for the purpose of temporary rates, and permits complainant to earn a fair return upon the fair value of its used and useful property.

[fol. 55] (4) The allegations of sub-paragraph (4) of the eleventh paragraph of the bill of complaint are denied and,

on the contrary, it is averred that the return allowed complainant in fixing its annual net operating income affords complainant a proper, just and fair return upon the fair value of its property used and useful in the public service, and is not confiscatory of the said property, nor does it deprive complainant of its property without just compensation or without due process of law.

(5) The allegations of sub-paragraph (5) of the eleventh paragraph of the bill of complaint are denied, and in specific answer thereto it is averred that:

(a) the allowance of rate case expenses to a utility in a proceeding resulting adversely to the utility is contrary to law, and no segregation of rate case expense as between proceedings before the Pennsylvania Public Utility Commission and before a Federal Statutory Court was submitted by complainant. It is therefore averred that the allowance made by the Commission for general regulatory expenses for the purpose of temporary rates is proper and adequate. If complainant is injured by a failure to allow rate case expense incurred before a Federal Statutory Court, this injury can be repaired when permanent rates are prescribed.

(b) It is averred that the Commission improperly disallowed problematical increased salary expense of approximately \$20,593 claimed by virtue of a resolution of the Board of Directors of complainant, dated October 28, 1937. It is further averred that if and when such increased salary expense is reasonably and properly incurred by complainant, allowance for the said expense may properly be made.

(6) The allegations of sub-paragraph (6) of the eleventh paragraph of the bill of complaint are denied, and on the contrary it is averred that York Railways Company has not abandoned its railway service and therefore no allowance for any problematical loss of revenue incident to such possible abandonment could or can properly be made. It is further averred that if and when such loss occurs and is properly shown, allowance may be made therefor.

Twelfth. The allegations of the twelfth paragraph of the bill of complaint, with the exception of that contained in sub-paragraph (4) thereof, are denied. In specific answer to the consecutive sub-paragraphs thereof it is averred as follows:

(1) The difference between the \$6,000,000 alleged by complainant as the minimum reproduction cost new of its [fol. 56] property, excluding working capital and going concern value, and the \$5,293,064 found by the Commission to represent such reproduction cost new of said property is due to a difference in overhead percentages used by complainant and by respondents, as is fully explained in the report and order printed as Exhibit "A" attached to the bill of complaint.

It is further averred that the overhead percentages used by respondents are proper, fair and reasonable.

(2) The difference between the figure of \$5,350,000 alleged by complainant to represent the approximate reproduction cost new less accrued depreciation of its property, excluding working capital and going concern value, and the \$4,737,803 figure found by respondents to represent such reproduction cost new results from a difference in overhead percentages. It is further averred that the overhead percentages used by respondents are proper, fair and reasonable.

(3) The depreciation of an original cost figure for the purpose of arriving at fair value is in accordance with the law. It is further averred that the amount of \$4,094,000, found by respondents to represent original cost of the property of complainant, reduced by a proper depreciation figure and excluding working capital and going concern value represents one just, proper and adequate basis for determination of fair value.

(4) The allegation of this sub-paragraph is admitted.

(5) The respondents made a proper, fair and reasonable allowance to complainant for going concern value, although such allowance was not made in a specific amount. It is further averred that the law does not require a separate allowance for this item.

(6) It is admitted that no allowance for net additions to the plant and property of complainant totalling \$142,851.07, as of September 30, 1937, was made, but it is denied that failure to make such an allowance constitutes error. It is further averred that respondents deducted no depreciation accruing during the period November 30, 1936 to September 30, 1937, and therefore had no occasion to add net additions to property.

Thirteenth. The allegations of the thirteenth paragraph of the bill of complaint, that complainant is lawfully entitled, by reason of the provisions of Section 310 (b) to a return of not less than an amount equal to its operating income for the calendar years 1935 or 1936 are denied. In answer thereto it is averred that the Commission in making the temporary rate order here involved printed as Exhibit "A" attached [fol. 57] to the bill of complaint, proceeded under paragraphs (a) (c) and (e) of Section 310 of the Public Utility Law, and therefore paragraph (b) has no relevancy or materiality in this case.

Fourteenth. It is denied that, as alleged in the fourteenth paragraph of the bill of complaint, the order of the Commission, printed as Exhibit "A" attached to the bill, is unreasonable, arbitrary or confiscatory or deprives complainant of a fair return upon the fair and reasonable value of the property devoted by complainant to the rendition of its public service, in violation of the Constitution of the United States and the Fourteenth Amendment thereto. On the contrary, it is averred that the said order of the Commission is just and reasonable and permits complainant to earn a fair return upon the fair value of its property used and useful in the public service.

Fifteenth. The allegations of the fifteenth paragraph of the bill of complaint are denied. On the contrary, it is averred that the provisions of Section 310 (e) of the Public Utility Law afford complainant full and adequate protection, not only against unconstitutional deprivation of its property, but also against any possibility of loss of proper revenue. It is further averred that the temporary order of the Commission here involved is just and reasonable, is sustained by the evidence and permits complainant to earn a just and proper return upon the fair value of its property. It is further averred that Section 310 (e) of the Public Utility Law safeguards in just and full measure the rights of complainant under the Constitution of the United States and the Fourteenth Amendment thereto and represents the epitome of protective legislation.

Sixteenth. The allegations of the sixteenth paragraph of the bill of complaint are denied. In answer thereto it is averred that the temporary rate order of the Commission

here involved is just and reasonable, is supported by the evidence, and permits complainant to earn a fair and just return upon the fair value of its property.

Seventeenth. The allegations of the seventeenth paragraph of the bill of complaint are denied. In answer thereto, it is averred that the said order printed as Exhibit "A" attached to the bill of complaint, is reasonable, proper and just, and permits complainant to earn a fair return upon the fair value of its used and useful property, and that complainant should be obliged to comply with the terms and provisions of said order.

Wherefore, your respondents, showing that the allegations of the bill of complaint herein are argumentative and erroneous, and fail to present an adequate or proper basis for the relief prayed for, and that the bill of complaint [fol. 58] should therefore be dismissed, pray that the prayer of the bill asking a temporary injunction and the prayer of the bill asking a permanent injunction be severally and collectively refused.

And respondents will ever pray, etc.

Dated January 7, 1937.

Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, Donald Livingston, Pennsylvania Public Utility Commission, by Samuel Graff Miller, Assistant Counsel; Edward Knuff, Counsel, Attorneys for Respondent, North Office Bldg., Harrisburg, Pennsylvania.

[fol. 59]

EXHIBIT "A" TO ANSWER.

Paragraphs (a) (c) and (e) of Section 310, Article III, of the Public Utility Law

"Section 310. Temporary Rates. (a) The commission may, in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint, after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine, and prescribe temporary rates to be charged by such public utility, pending the final determination of

such rate proceeding. Such temporary rates so fixed, determined, and prescribed, shall be sufficient to provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property (when first devoted to public use) of such public utility, used and useful in the public service, and if the duly verified reports of such public utility to the commission do not show such original cost, less accrued depreciation, of such property, the commission may estimate such cost less depreciation and fix, determine, and prescribe rates as hereinbefore provided.

.

“(c) The commission may, in the manner hereinbefore set forth, fix, determine, and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month, or at any other interval, such temporary rates as it has previously fixed, determined, and prescribed.

.

“(e) Temporary rates so fixed, determined, and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined, and prescribed under this section, the commission shall consider the effect of such rates in fixing, determining, and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceeding. If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a [fols. 60-61] temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.”

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERVENORS TO BILL OF COMPLAINT—Filed January 17, 1938

To the Honorable the Judges of the Said Court:

The Utility Consumers League of the City and County of York, Pennsylvania, by Willis E. Ramsay, President and Herbert B. Cohen its attorney answers the Bill of Complaint of the above named Complainant as follows:

First. Paragraph first of the said bill of complaint is admitted.

Second. Paragraph second of the said bill of complaint is admitted.

Third. Paragraph third of the said bill of complaint is admitted.

Fourth. Paragraph fourth of the said bill of complaint is admitted.

Fifth. Paragraph fifth of the said bill of complaint is neither admitted nor denied, intervenors having no information permitting admission or denial. If the said allegations are deemed material, intervenors ask proof thereof.

Sixth. Paragraph sixth of the said bill of complaint is answered as follows:

1. It is denied that the temporary order issued by the respondents is in violation of the plain spirit and intent of Section 310 of Article III of the Pennsylvania Public Utility Law, and it is affirmatively averred that the plain spirit and intent of the Act is to prevent the hardship and injustice resulting to the consumers from long periods of delay in realizing the fruits of a justifiable reduction of rates.

(a) The abuses sought to be remedied by the Pennsylvania Legislature through the enactment of the Pennsylvania Public Utility Law has been characterized by the instant rate proceedings against the Edison Light & Power Company. As long ago as January 27, 1936, the Pennsylvania Public Service Commission, predecessors of the Public Utility Commission, after having been requested by the

Utility Consumers League, intervenors herein, instituted on its own motion an inquiry and investigation for the purpose of determining the reasonableness of the rates and charges of the Edison Light & Power Company, complainant herein.

(b) That as long as March 11, 1937, Joseph E. Wayne, President of the complainant company, in one of the hearings before the Pennsylvania Public Service Commission, predecessors to the Public Utility Commission, in answer to a question submitted to him by Clarence W. Miles, Esquire, of counsel for the said complainants, said, "The Edison Light & Power Company has offered to reduce its rates in the amount of \$250,000 annually," and that Clarence W. [fol. 63] Miles, Esquire, at the same hearing, in stating the position of the instant complainant, said that the revenues of the Edison Light & Power Company could be reduced by the sum of \$250,000 and leave an amount sufficient to continue the operation of the four companies as operated in 1936.

(c) Notwithstanding the foregoing admissions that the present excessive rates of the complainant company are far in excess of a reasonable rate of return on the fair value of its property, relief has not been forthcoming to the consumers and rate payers of the complainant, and on the contrary the complainant company has continued to collect excessive rates from the rate payers of the City of York and its environs.

(d) The Pennsylvania Public Utility Law and the intent of the Pennsylvania Legislature in its passage, sought to accomplish for the rate payers of the Commonwealth instant relief from excessive and exorbitant charges.

(e) It is specifically averred that a temporary order, in view of the above facts, is an order which will carry immediate relief for such excessive overcharges.

(f) The conduct of the complainant company has been highly unconscionable in view of its foregoing admissions and is exactly the type of conduct which Section 310 of the Pennsylvania Public Utility Law sought to avoid in providing for the issuance of temporary rates by the Public Utility Commission.

(g) This order, Exhibit A of said bill of Complaint, affords the consumers of the complainant company immedi-

ate relief and will permit the Public Utility Commission, by observance of the effect of the temporary order, by further investigations and deliberations of the facts presented at the various hearings in the instant rate proceeding, to enter a more proper and complete final order establishing a permanent reduction of rates for the said complainant company, which from all indications will be an even greater reduction than has been ordered by the report and order Exhibit A of said bill of complaint.

-2. It is denied that the virtue of the said action of the Commission in entering another temporary order schedules prescribing unreasonable and confiscatory rates were imposed upon said Complainant as will appear by reference to the said order and schedules filed as Exhibit A to said bill of complaint.

3. It is further denied that the action of the respondents in failing and refusing to enter a final order establishing a permanent reduction is arbitrary and unreasonable, and it is affirmatively averred that said order was entirely proper under the circumstances of the case and entirely within the plain spirit and intention of Section 310 of the Public Utility Law of Pennsylvania.

The voluminous and extensive record of the present rate proceeding would of necessity compel the Commission to make a more thorough study of the facts and figures there presented in determining the amount of a permanent rate reduction than is necessary for determination of the temporary rate reduction. The authorities are all in accord with the principle that it is not necessary for a utility commission to determine with the same particularity the facts upon which a temporary order is based as it must in arriving at a permanent order.

4. It is further denied that the supplemental report and [fol. 64] order of the Commission, Exhibit A of said bill of complaint, is arbitrary, unreasonable and unlawful and it is affirmatively averred that said order is lawful and reasonable in every respect and is in compliance with the majority opinion of the District Court of the United States for the Middle District of Pennsylvania, Equity Case No. 1289 June Term, 1937, reported in 5 U. S. L. Week, 160, which case involves the same controversy set forth herein and the same parties complainant and respondent.

Seventh. Paragraph seventh of said bill of complaint is answered as follows:

1. It is denied that Section 310 is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto for the following reasons:

(a) That on July 27, 1937, the Public Utility Commission, respondents herein, issued a temporary order requiring the complainant herein to make a reduction of \$435,000 annual gross operating revenue, and that the complainant herein filed a bill of complaint (a copy of which is hereto attached and marked Exhibit I), to the said order in a Federal Statutory Court for the Middle District in Scranton, Pennsylvania, said court being composed of the Honorable J. Warren Davis, Circuit Judge, the Honorable Albert L. Watson, District Judge and the Honorable Albert W. Johnson, District Judge.

(b) The said bill of complaint Exhibit I of this answer involved identical parties complainant and identical parties respondents as are complainant and respondents in the instant bill; that the said complaint was based upon the same facts and raised the same questions of law with respect to the constitutionality of Section 310 of Article III of the Pennsylvania Public Utility Law as were raised in paragraph seventh of the present bill of complaint. (Paragraph fifth of said Exhibit I.)

(c) That pursuant to said bill of complaint filed before the aforementioned Statutory Court, oral argument and briefs having been filed, the said Court on October 15, 1937, to No. 1289 June Term, 1937, In Equity, filed separate opinions replying to said matter. The opinion of J. Warren Davis, C. J., is attached hereto and marked Exhibit II; the opinion of Albert W. Johnson, D. J., is attached hereto and marked Exhibit III, and the opinion of Albert L. Watson, D. J., is attached hereto and marked Exhibit IV.

(d) That the majority opinions in the case before the United States District Court for the Middle District of Pennsylvania to No. 1289 June Term, 1937, clearly indicate that the Court there held Section 310 of Article III of the Pennsylvania Public Utility Law to be in compliance with the Constitution of the United States of America and the Fourteenth Amendment thereto. (See also 86 U. of P. Law Review, 314)

(e) That in view of the aforementioned ruling of the United States District Court for the Middle District of Pennsylvania, Equity Case No. 1289 June Term 1937, involving the same parties complainant and respondents as are complainant and respondents to the present bill of complaint and involving the same facts as are presented to the court in the present suit, said Statutory Court for the Middle District of Pennsylvania being a court of similar status as the present court, and the instant case not being here by an appeal or by reference hereto from the said Statutory Court for the Middle District of Pennsylvania, the present court is without jurisdiction to determine the [fol. 65] question of constitutionality of Section 310 of Article III of the Pennsylvania Public Utility Law for the reason that said question is res adjudicata.

2. It is further alleged that the attempt on the part of the complainant in this bill of complaint to ignore the decision of the United States District Court for the Middle District of Pennsylvania and again raise the question of the constitutionality of Section 310 of Article III is unjustifiable, unreasonable and inequitable and demonstrates a total disregard and lack of respect for the authority of the United States District Court for the Middle District of Pennsylvania, and bespeaks a misuse of the proper functions of a court of justice.

Eighth. Paragraph eighth of the said bill of complaint is denied as follows:

1. It is averred that the present court is without jurisdiction to interpret the validity of Section 310, Article III of the Public Utility Laws with respect to the Pennsylvania State Constitution and that complainant has an adequate remedy at law in the courts of the Commonwealth of Pennsylvania to determine such question.

Ninth. Paragraph ninth of said bill of complaint is answered as follows:

1. It is denied that said order Exhibit A of said bill of complaint violates the right guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto for the reasons set forth in paragraph seventh of this answer, and it is averred that said order Exhibit A, of said bill of complaint clearly

contains all the necessary facts to show that said order is based upon substantial evidence, in the large part complainant's own testimony and valuations, to render a valid and proper order of reduction in annual gross operating revenue as set forth therein.

2. It is further averred that paragraph ninth of said bill of complaint is purely argumentative and does not show grounds for relief by this court.

Tenth. Paragraph tenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Eleventh. Paragraph eleventh of said bill of complaint is answered as follows:

1. It is denied that said order Exhibit A violates the right guaranteed to complainants under the Constitution of the United States of America and the Fourteenth Amendment thereto, and deprives complainant of its property without due process of law and without just compensation therefor for the following reasons:

(1) It is denied that the determination by the Commission of the basis for the prescription of temporary rates is arbitrary, confiscatory and unreasonable and it is hereby averred that the amount of \$5,250,000 so determined is fair, reasonable and supported by the testimony of both the Commission and the complainant in hearings before the said Commission as appears from the report and order Exhibit A to said bill of complaint.

(2) It is denied that the method pursued by the Commission in making its determination of the basis for the prescribing of temporary rates to be charged by the complainant was erroneous, illegal and arbitrary, and on the contrary it is averred that the report and order Exhibit A of said Bill of Complaint is wholly in compliance with the ruling of the majority of the court in the United States District Court for the Middle District of Pennsylvania; to No. 1289 June Term, 1937.

(3) It is denied that the rate of return allowed by the Commission is inadequate and confiscatory and on the con-

trary it is averred that the report and order Exhibit A to said bill of complaint clearly indicates that the rate of return allowed will yield to the complainant a fair return upon the fair value of its property devoted to the rendition of its public service. The complainant is also protected from confiscation by the provision of Section 310, Article III of the Public Utility Law, which provides for recoupment against any possible loss sustained by it.

(4) Subsection (4) of paragraph eleventh is denied for the reasons set forth in subsection (3) of paragraph eleventh of this answer.

(5) Subsection (5) of paragraph eleventh is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

(6) Subsection (6) of paragraph eleventh is denied for the same reasons as those set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, constituting the Pennsylvania Utility Commission.

Twelfth. Paragraph twelfth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Thirteenth. Paragraph thirteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Fourteenth. Paragraph fourteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Fifteenth. Paragraph fifteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Sixteenth. Paragraph sixteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Seventeenth. Paragraph seventeenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard [fol. 67] J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Eighteenth. Paragraph eighteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Nineteenth. Paragraph nineteenth is denied for the same reasons as set forth in the answer filed by the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard, and Donald Livingston, individually and as the persons constituting the Pennsylvania Public Utility Commission.

Wherefore, your intervenors showing that the allegations of the bill of complaint herein are argumentative and erroneous, and fail to present an adequate or proper basis for the relief prayed for, and showing that the questions of constitutionality of the Pennsylvania Public Utility Law are res adjudicata, having been determined by the Statutory Court for the Middle District of Pennsylvania, and that the report and order complained of have been issued by the respondents in compliance with said Statutory Court for the Middle District of Pennsylvania, and that the bill of complaint should therefore be dismissed, pray that the

prayer of the bill asking a temporary injunction and the prayer of the bill asking a permanent injunction be severally and collectively refused.

And the intervenors will ever pray, etc.

Dated January 14, 1938.

Utility Consumers League, by Willis E. Ramsay, President, by Herbert B. Cohen, Attorney for Intervenors, 124 E. Market Street, York, Penna. Clarence M. Lawyer, Jr., 124 E. Market Street, York, Penna., of Counsel.

[fol. 68] *Duly sworn to by Willis E. Ramsay. Jurat omitted in printing.*

[fol. 69]

EXHIBIT I TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, JUNE TERM, 1937

1289

EDISON LIGHT & POWER COMPANY, a Corporation Complainant,

against

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard, and Donald Livingston, Individually and as Constituting the Pennsylvania Public Utility Commission, Respondents

BILL OF COMPLAINT

Edison Light & Power Company, the above named complainant, by Walter Biddle Saul, its attorney, for its bill of complaint against the respondents, respectfully shows to the Court and alleges:

First. That the complainant is a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal office and place of business in the City and County of York within the jurisdiction of the United States District Court for the Middle District of Pennsylvania; that the complainant is and for many years has been a public utility company engaged in the business of generating, transmitting, distributing and

selling electric energy to the residents of said City and County of York and environs, pursuant in all respects to the laws of the Commonwealth of Pennsylvania.

Second. That the respondents, Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald Livingston are and at all times herein complained of were the persons constituting the Pennsylvania Public Utility Commission, an administrative body created by an Act of Assembly of said Commonwealth. That the respondents are sued herein individually in their respective own rights, and as the persons constituting said Pennsylvania Public Utility Commission, and are hereinafter sometimes collectively referred to, both in their respective individual capacities and in their official capacities as members of said Pennsylvania Public Utility Commission, as the "Commission." That the powers and duties of the Commission with respect to the regulation of public utilities are prescribed and limited by an Act of the Assembly of the Commonwealth of Pennsylvania known as the "Public Utility Law," adopted on or about May 28, 1937.

Third. That complainant is informed and believes and therefore alleges and avers that all of the respondents reside in the Commonwealth of Pennsylvania; that the principal official office of the respondents and of the Commission is in the City of Harrisburg within the jurisdiction of the United States District Court for the Middle District of [fol. 70] Pennsylvania; and that the order of the Commission herein complained of was promulgated at said principal office.

Fourth. That this is a civil suit in equity. That the matters in controversy and the questions herein involved arise under the Constitution and laws of the United States of America, and the amount in controversy exceeds the sum or value of \$3,000, exclusive of interest and costs. That this bill of complaint is filed and this suit prosecuted to enjoin and restrain the enforcement of an order of the Commission dated July 27, 1937, and served upon the complainant on or about July 28, 1937 (a true and correct copy of which is annexed hereto, made a part hereof and marked Exhibit "A"), imposing upon the complainant a reduction in annual gross operating revenue of approximately \$435,000, as specified therein.

Fifth. That said order, Exhibit A, purports to be made pursuant to the provisions of Section 310 of Article III of said Public Utility Law. That said Section 310 is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, in that :

(1) It purports to empower the Commission to fix, determine and prescribe so-called temporary rates to be charged by public utilities under the jurisdiction of the Commission, which rates will not permit said public utilities to earn a fair return on the fair value of their property used and useful in the public service, and thereby to deprive the complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(2) It purports to empower the Commission to fix, determine and prescribe such so-called temporary rates by alternative methods and upon alternative bases, pursuant to one of which (subparagraph (a)) such rates may provide a return as low as 5% upon the original cost less accrued depreciation of the physical property of such public utilities used and useful in the public service, whereas pursuant to the second such method or basis (sub-paragraph (b)) such rates shall provide a return of not less than an amount equal to the operating income (as adjusted by the Commission) of such public utilities for the calendar year 1935 or some subsequent year, regardless of whether such adjusted operating income is greater or less than 5% of such original cost less accrued depreciation; that it therefore purports to empower the Commission to fix, determine and prescribe so-called temporary rates which will discriminate unfairly between such public utilities, and thereby to deny to the complainant and all other such public utilities the equal protection of the laws.

(3) Sub-paragraph (c) of said Section 310 purports to empower the Commission to fix, determine, prescribe and change such so-called temporary rates every month or at any other interval and thereby to deny to the complainant and all other such public utilities the right to a fixed return and to prevent the complainant and all other such public utilities from establishing a definite policy with respect to their financial affairs and the conduct of their businesses and operations in an orderly and efficient manner; that said

sub-paragraph (c) fails to provide for notice to such public [fol. 71] utilities of any such determination, prescription or change of such so-called temporary rates or an opportunity to be heard with respect thereto and thereby permits the Commission to deprive the complainant and all other such public utilities of their property without just compensation therefor and without due process of law.

(4) Sub-paragraph (d) of said Section 310 purports to empower the Commission to prescribe such so-called temporary rates for a trial period without giving to such public utilities any notice thereof or an opportunity to be heard with respect thereto, and thereby to deprive the complainant and all other such public utilities of their property without due process of law.

(5) Sub-paragraph (e) of said Section 310 does not and cannot provide adequate and complete compensation or reimbursement for or restore the loss occasioned by the confiscation of the property of the complainant and all other such public utilities or for the deprivation of the property of the complainant and all other such public utilities without due process of law, all as hereinabove set forth.

Sixth. That said Section 310 is in violation of the Constitution of the Commonwealth of Pennsylvania in that sub-paragraphs (b), (c) and (d) thereof constitute an unlawful delegation of legislative power in contravention of Section One of Article II thereof.

Seventh. That said order, Exhibit A, by its express provisions superseded, rescinded and was entered in lieu of an order of said Commission dated July 13, 1937, and served upon the complainant on or about July 21, 1937 (a true and correct copy of which is annexed hereto, made a part hereof and marked Exhibit B); that said order, Exhibit A, is in violation of the provisions of Section 1005 of Article X of the aforementioned Public Utility Law, in that the same contains no recital therein of the findings of the Commission in sufficient detail to permit of a judicial review of the controverted questions presented in the proceedings in which said order was entered.

Eighth. That said order, Exhibit A, violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amend-

ment thereto and deprives the complainant of its property without due process of law in that said order contains no findings by the Commission and is not based upon any determination by it of (1) the fair value of the property devoted by the complainant to the rendition of its public service or (2) a fair rate of return to be applied thereto or (3) the return to which the complainant is lawfully entitled, and that said order is not supported by any substantial evidence before the Commission.

Ninth. That said order, Exhibit A, further violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives the complainant of its property without due process of law and without just compensation therefor, in that a fair return on the fair value of the property devoted to the rendition of the public service of complainant is an amount far greater than that remaining to the complainant after effecting the reduction in its annual gross operating revenues provided in said order.

[fol. 72] Tenth. That, if said order, Exhibit A, is based upon any findings of fact or any determinations by the Commission, said order is based upon the findings of fact and determinations set forth in said order, Exhibit B. That said order, Exhibit A, if so construed, violates the rights guaranteed to the complainant under the Constitution of the United States of America and the Fourteenth Amendment thereto and deprives the complainant of its property without due process of law and without just compensation therefor and deprives the complainant of the equal protection of the laws, in that:

(1) The determination by the Commission of the basis for the prescription of temporary rates for the complainant is arbitrary, confiscatory and unreasonable, and the amount of \$5,250,000 so determined is far less than the fair value of the property of the complainant used and useful in the public service.

(2) The method pursued by the Commission in making its determination of the basis for the prescription of temporary rates to be charged by the complainant was erroneous, illegal, arbitrary and wholly unsupported by any substantial evidence.

(3) The rate of return allowed by the Commission is inadequate and confiscatory and will fail to yield to the complainant a fair return upon the fair value of the property devoted to the rendition of the public service of the complainant.

(4) The return allowed the complainant in fixing its annual net operating income allowable thereunder is less than a fair return upon the fair value of the property of the complainant used and useful in the public service, and said return is confiscatory of the complainant's said property and deprives the complainant of its property without just compensation therefor and without due process of law.

(5) The Commission, in making its determination of the rate base of the complainant and the allowable return upon the same:

(a) erroneously and illegally failed and refused to (i) include in such rate base certain property not owned by the complainant but devoted to the rendition of its public service, or (ii) make any allowance in the operating expenses of the complainant to provide a reasonable charge for the use of such property, and

(b) erroneously and illegally failed and refused to include in the operating expenses of the complainant any allowance for the cost of services rendered by certain officers and employees of the complainant to certain of its affiliates and which services are in part now paid for by said affiliates of the complainant.

(6) The Commission erroneously and illegally failed and refused to allow the sum of \$88,710 in the operating expenses of the complainant, representing certain expenses necessarily incurred and paid by the complainant in connection with the preparation and presentation before the Commission of testimony and evidence necessary to be heard by the Commission in a proceeding instituted by the Commission upon its own motion challenging the reasonableness of the rates charged by the complainant.

[fol. 73] (7) The Commission erroneously and illegally failed and refused to allow proper sums in the operating expenses of the complainant by reducing the allowance of

the complainant for its annual tax liability from \$332,397 to \$180,000, whereas a proper recalculation of tax liability on the basis of the reduced allowable operating revenue, as determined by the Commission, would produce a resulting annual liability for taxes in the amount of approximately \$218,000, exclusive of any allowance for federal undistributed profits taxes.

(8) The Commission erroneously and illegally failed and refused to make any allowances in the operating expenses of the complainant for its proportionate part of the cost of regulation and in addition thereto for such sum as may be chargeable to the complainant for the expenses of the Commission incurred in the prosecution of its investigation of the rates of the complainant, as provided by clauses (a) and (b) of Section 1201 of Article XII of said Public Utility Law.

Eleventh. That in said order, Exhibit A, if the same be deemed and construed to include the findings of fact set forth in the previous order, Exhibit B, the Commission erroneously and illegally determined that the proper basis for the prescription of temporary rates is the sum of \$5,250,000; that said sum is far less than the fair value of the property of the complainant used and useful in the public service, as will appear from the following:

(1) The reproduction cost new of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts but excluding working capital and going concern value, is in excess of \$6,000,000.

(2) The reproduction cost new less accrued depreciation of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts but excluding working capital and going concern value, is approximately \$5,350,000.

(3) The original cost of said property, including property embraced within the general overhead accounts as prescribed by the Commission's classification of accounts but excluding working capital and going concern value, is in excess of \$5,000,000.

(4) A fair and reasonable allowance to the complainant for working capital is not less than \$150,000.

(5) A fair and reasonable allowance to the complainant for going concern value is not less than \$400,000.

(6) The complainant is informed and believes and therefore alleges and avers that the Commission erroneously and illegally failed and refused to include in its determination of said rate base any allowance for certain generating and converting facilities of the complainant, the value of which is in excess of \$550,000, and/or erroneously and illegally failed and refused to include in its determination of said rate base any allowance for certain converting facilities and properties, the value of which is in excess of \$80,000, and/or erroneously and illegally failed and refused to include in its determination of said rate base any allowance for the distribution lines of the complainant built in whole [fol. 74] or in part by funds contributed by its consumers, the value of which is approximately \$200,000, and/or erroneously and illegally failed and refused to include in its determination of said rate base any allowance for going concern value, a fair allowance for which is in excess of \$400,000.

(7) The said determination by the Commission of said rate base in the amount of \$5,250,000 is arbitrary, illegal, erroneous and wholly unsupported by any substantial evidence.

Twelfth. That by said order, Exhibit A, the Commission reduced the annual gross operating revenue of the complainant to an amount whereby its annual net operating income would be far less than the fair return to which the complainant is lawfully entitled for the following reasons:

The complainant and two of its affiliated corporations (York Steam Heating Company and York Bus Company) are commonly and wholly owned by York Railways Company and each of said four companies is engaged in business as a public utility in the City of York, Pennsylvania and environs; York Railways Company has presently outstanding certain First Mortgage Thirty Year Five Per Cent Gold Bonds in an aggregate principal amount of approxi-

mately \$5,770,000, which mature on December 1, 1937, and are secured by a direct lien upon the physical properties and assets of said York Railways Company and the further pledge of all of the common stocks of the complainant, York Steam Heating Company and York Bus Company, as well as certain evidences of indebtedness of the complainant in the aggregate principal amount of approximately \$1,100,000; by virtue of the affiliation as aforesaid the complainant and its consumers enjoy and derive substantial benefits in the way of (i) profits resulting from the sale of electric energy and steam by the complainant to said York Railways Company and York Steam Heating Company, respectively, (ii) certain economies in operations resulting from the payment by certain of the complainant's affiliates to the complainant of a portion of the salaries of its administrative officers and employees, (iii) the use by the complainant, without cost to it, of certain transmission lines, poles, land, buildings, etc., of said York Railways Company representing an approximate investment to it of \$168,000, and (iv) certain intangible and other benefits and advantages resulting therefrom; the said benefits and advantages result in aggregate annual savings in operating expenses and additional profits in excess of \$130,000; the aggregate fair value of the property of the complainant and its said affiliates devoted to the rendition of their respective public services is substantially in excess of \$8,500,000; the consolidated gross operating revenue of said corporations for the twelve months ended June 30, 1937 was approximately \$2,706,000 and the consolidated gross operating expenses for said period was approximately \$1,490,000; the consolidated net operating revenue for said period was approximately \$1,216,000 and the consolidated net operating income for said period (after deducting reasonable allowances for retirement expense and taxes) amounted to approximately \$483,000; the total interest due and payable upon the aforementioned outstanding bonds of said York [fol. 75] Railways Company for the said period amounted to approximately \$304,600, the interest accrued upon consumers deposits of the complainant for said period amounted to approximately \$4,000, and the total of said interest charges of the complainant and its affiliates for said period amounted to approximately \$308,600; the consolidated net operating income, less the aforementioned

consolidated fixed interest charges of the complainant and its affiliates for said period, but excluding any allowance for debt discount and expense of approximately \$36,900, amounted to approximately \$174,400; the minimum net operating income required to be earned by the complainant itself in order to produce a consolidated income of complainant and its said affiliates equal to their consolidated fixed interest charges amounted to approximately \$448,600; applying the reduction of \$435,000 prescribed by said order Exhibit A, the consolidated net operating income of the complainant and its said affiliates for the twelve months ended June 30, 1937, would be approximately \$120,200 less than the amount of the aforementioned fixed interest charges of the complainant and its said affiliates for said period, and would have resulted in a consolidated net deficit for the complainant and its said affiliates for said period of approximately \$131,700. The complainant is informed and believes and therefore alleges and avers that the continued operation of the businesses of the complainant and its said affiliates on the basis of the results of their operations for the twelve months ended June 30, 1937, as adjusted to reflect the reduction of \$435,000 prescribed by said order, Exhibit A, would result in the eventual separation of the complainant and its aforementioned affiliates and that thereby the complainant and its consumers would or might be deprived of the benefits resulting from the aforementioned sales of electric energy and steam, and would likewise suffer an increase in capital expenditures or operating expenses due to the necessity of either leasing the aforementioned or similar physical properties and facilities now owned by York Railways Company but used by the complainant without cost to it or constructing similar physical properties and facilities, and in addition thereto would be required to incur and pay additional expenses for salaries to its officers and employees, as well as other additional expenses and suffer loss of profits resulting from the loss of additional intangible and other benefits of the affiliation of complainant and its said affiliates, all as hereinabove set forth. In spite of the fact that the complainant, in the proceeding in which said order, Exhibit A, was promulgated, duly offered testimony and other evidence and duly proffered proof of the facts hereinabove set forth (other than the facts regarding said order, Exhibit A, and

its effects), nevertheless the Commission erroneously and illegally excluded said testimony and evidence from the record of said proceeding and refused to permit the complainant to submit said proof.

Thirteenth. That in said order, Exhibit A, if the same be deemed and construed to include the findings of fact set forth in the previous order, Exhibit B, the Commission, in determining the allowable net operating income of the com-[fol. 76] plainant, erroneously and illegally failed and refused to make proper allowances for certain operating expenses and the loss of certain revenues of the complainant necessarily incurred or to be incurred by it in the ordinary conduct of its business, as follows:

(1) The complainant has for several years past enjoyed and now enjoys, without cost to it, the use of certain transmission lines, poles, land, buildings, etc., owned by York Railways Company representing an approximate investment to it of \$168,000; said properties are used by the complainant in connection with the transmission, distribution and sale of electric energy to its consumers; the fair and reasonable rental value of said property is approximately \$18,800 per annum. In the event complainant is denied the right to earn a return which, together with the return of its aforementioned affiliates, will be sufficient to equal their consolidated operating and other expenses and charges (including bond interest) and as a result thereof the complainant is separated from its said affiliates, the complainant will be deprived of the aforementioned free use of such properties and put to the additional expense of constructing duplicate properties or of leasing the aforementioned properties for said approximate sum of \$18,800 per annum, for which no allowance was made by the Commission.

(2) For several years past and at the present time, the complainant and certain of its affiliates have included and include among their operating personnel various officers and employees whose services and time are allocated among the complainant and such affiliates, with a proportionate distribution of their respective salaries and expenses. In the event complainant is denied the right to earn a return which, together with the return of such affiliates, will be sufficient to equal their consolidated operating and other expenses and charges (including bond interest) and as a

result thereof the complainant is separated from such affiliates, the complainant will be deprived of the contribution of the proportionate part of the aggregate expenses of said officers and employees now allocated to and paid by such affiliates and will thereafter be required to pay the entire present aggregate salaries and compensation of such officers and the majority of such employees, and the total additional cost to the complainant, in such event, will be approximately \$20,600 per annum, for which no allowance was made by the Commission.

(3) For several years past, the complainant has sold electric energy to the York Railways Company. In the event complainant is denied the right to earn a return which, together with the return of its aforementioned affiliates, will be sufficient to equal their consolidated operating and other expenses and charges (including bond interest) and as a result thereof the complainant is separated from its said affiliates, the complainant will be deprived of an annual profit of approximately \$15,000 resulting from the said sale of electric energy to York Railways Company, thereby reducing the net annual revenues of the complainant by said amount, for which no allowance was made by the Commission.

(4) In connection with the presentation of its case before [fol. 77] the Commission in the proceeding in which the aforementioned orders, Exhibits A and B, were promulgated, the complainant was required to employ engineers, auditors and attorneys and to incur other necessary expenses incidental to the presentation of such case. During the year ended December 31, 1936, such rate case expenses aggregated approximately \$38,710 and up to and including June 30, 1937, such rate case expense aggregated approximately \$101,000. The Commission failed and refused to include in complainant's operating expenses in determining its allowable net operating income any allowance for the aforementioned rate case expense. The complainant is lawfully entitled to include such rate case expense in its operating expenses. At the time of the promulgation of the aforementioned orders, Exhibits A and B, the Commission had before it a document entitled "Respondent's Exhibit No. 16" showing the estimated rate case expense of the complainant as at or about March 1, 1937, to be approximately \$86,000. The accuracy of said exhibit and the amount

therein stated was neither questioned nor refuted in said proceeding.

(5) The provisions of Section 1201 of Article XII of the aforementioned "Public Utility Law" provide for an assessment of expenses incident to the regulation of public utilities thereunder for the purpose of reimbursing the General Fund of the State Treasury for all expenses incurred by the Commission in connection with the administration and enforcement of said Public Utility Law and for such expenses as may be incurred by the Commission in a particular rate proceeding or investigation such as the one in which the aforementioned orders, Exhibits A and B, were promulgated. Such assessment should have been made pursuant to the aforementioned provisions of said law and the sum resulting therefrom allowed in the operating expenses of the complainant. The Commission erroneously and illegally failed and refused to make any allowance in the operating expenses of the complainant on account thereof.

Fourteenth. That by said order, Exhibit A, the Commission reduced the annual gross operating revenue of the complainant to an amount whereby its annual net operating income would be far less than that to which it is entitled under the provisions of Section 310 of the aforementioned Public Utility Law in that, pursuant to subparagraph (b) thereof temporary rates established with respect to a public utility not having continuing property records must be sufficient to provide a return of not less than an amount equal to the operating income of such public utility for the year ended December 31, 1935 or such other subsequent year as the Commission may deem proper; that complainant does not have such continuing property records and is, therefore, lawfully entitled under said Section 310 to a return of not less than an amount equal to its operating income for the calendar years 1935 or 1936; that the application of said order, Exhibit A, would reduce the operating income of the complainant to an amount far less than the return to which the complainant is lawfully entitled as aforesaid.

Fifteenth. That by reason of the foregoing facts, said [fol. 78] order, Exhibit A, is unreasonable, arbitrary and confiscatory and deprives the complainant of a fair return upon the fair and reasonable value of the property devoted by complainant to the rendition of its public service, in

violation of the Constitution of the United States and the Fourteenth Amendment thereto.

Sixteenth. That the provisions of Section 310 (e) of Article III of said Public Utility Law do not and cannot provide adequate and complete compensation or reimbursement for the confiscation of the property of the complainant as hereinabove alleged, and do not and cannot prevent said order, Exhibit A, from depriving the complainant of its property without just compensation therefor and without due process of law, in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto.

Seventeenth. That the future compensation or reimbursement purportedly guaranteed by said Section 310 (e) will not and cannot restore to the complainant the aggregate loss suffered by it as a result of the confiscation of its property by the enforcement of said order, Exhibit A; and that the provisions of said Section 310 (e) with respect to the purported recoupment of losses resulting from the difference between temporary and final rates are wholly inadequate and illusory.

Eighteenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, the complainant will be deprived of its rights and privileges guaranteed by the Constitution of the United States of America and the Fourteenth Amendment thereto, and will be forced to surrender its constitutional rights and will suffer irreparable injury and damage.

Nineteenth. That unless the Commission is enjoined and restrained from enforcing or attempting to enforce said order, Exhibit A, the complainant will be obliged to comply with the terms and provisions of said order through fear of the severe penalties imposed upon it for non-compliance therewith under the provisions of Sections 1301 and 1302 of Article XIII of the aforementioned Public Utility Law, to wit: the payment of a fine of \$50 for each and every day during which said order is not complied with; that such forced compliance with said order, Exhibit A, will result in the confiscation of the property of the complainant, the deprivation of its property without due process of law and without just compensation therefor, and the denial to the complainant of the equal protection of the laws.

Twentieth. That the complainant does not have a plain, speedy and efficient remedy either at law or in equity in the courts of the Commonwealth of Pennsylvania, in that the complainant by virtue of the provisions of Sections 1103 and 1111 is deprived of any right to obtain a supersedeas of said order, Exhibit A, on appeal therefrom, or an injunction or restraining order for the purpose of preventing the enforcement of said order, Exhibit A, and the resultant confiscation of complainant's property as hereinabove alleged.

Twenty-first. That the complainant has neither a full, complete, nor adequate remedy at law.

Wherefore, complainant prays:

(a) That a writ of subpoena issue directed to the respondents, commanding them and each of them to appear and answer fully to this bill of complaint, but not under oath, answer under oath being expressly waived.

(b) That the respondents, and each of them, individually in their own respective rights and in their official capacities as members of the Pennsylvania Public Utility Commission and their respective successors in office, and all of those acting or claiming to act under their authority or in aid or assistance of them, be enjoined and restrained from in any manner enforcing or attempting to enforce the order of said Commission, Exhibit A; and from instituting or threatening to institute against the complainant or any of its officers, directors, servants, agents or employees, any civil or criminal proceedings in any manner or form before any judge or court of any jurisdiction, based upon any claimed violation by the complainant of or non-compliance with said order, Exhibit A; and from imposing or attempting to impose upon the complainant or any of its officers, directors, servants, agents, or employees, any penalty for the complainant's claimed non-compliance with or violation of said order, Exhibit A.

(c) That pending the determination of this suit a temporary injunction be granted forbidding, restraining and enjoining all of the actions on the part of the respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(d) That pending the hearing and determination of an application for a temporary injunction as prayed for in

paragraph (c) hereof, to be returnable upon order to show cause herein, this Honorable Court grant a temporary restraining order forbidding, restraining and enjoining all of the actions on the part of the respondents with respect to which a permanent injunction is prayed for in paragraph (b) hereof.

(e) That it be adjudged that the order of said Commission, Exhibit A, is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment thereto, and is void and of no force and effect.

(f) That it be adjudged that Section 310 of Article III of said Public Utility Law is contrary to and in violation of the Constitution of the United States of America and the Fourteenth Amendment hereto, and is void and of no force and effect.

(g) That the complainant have such other and further relief as may be just and proper and equitable in the premises.

And complainant will ever pray, etc.

Dated, July 31, 1937.

Edison Light & Power Company, by J. E. Wayne, President, by Walter Biddle Saul, Attorney for Complainant, Office and Post Office Address: Packard Building, Philadelphia, Penna. Clarence W. Miles, Baltimore Trust Building, Baltimore, Md., of Counsel.

[fol. 80] *Duly sworn to by J. E. Wayne. Jurat omitted in printing.*

[fol. 81] EXHIBIT "A" TO COMPLAINT (Exhibit 1)

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 11108

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

EDISON LIGHT AND POWER COMPANY

INTERIM REPORT AND ORDER

By the COMMISSION:

By interim report and order of July 13, 1937, in this proceeding, the Commission directed Edison Light and Power

Company, respondent, to file a tariff supplement effecting a temporary reduction of approximately \$435,000 in its annual gross operating revenue by the application of a Commission Adjustment Multiplier to all net monthly bills rendered to consumers billed under certain tariff schedules.

On July 15, 1937, the Superior Court filed its opinion in *Pennsylvania Power and Light Company v. Public Service Commission, et al.*, — Atl. —, — Pa. Superior Ct. —. In the course of this opinion the court, speaking through Judge Parker, stated, that although in many cases appeals had been disposed of without a determination of a precise tariff, the Commission should, under the circumstances, determine "what, in its opinion, are fair charges or proper tariffs." The Court remanded the record to the Commission, directing *inter alia*, "that a proper schedule of rates be fixed."

We have examined our interim report and order of July 13, 1937, in the light of the cited court opinion. Since adoption of our report and order of July 13, 1937, we have also obtained from the Edison Light and Power Company consumer data which may be used in the construction of a tariff. It is our opinion that the effect of the cited decision is to require us, whenever possible, to construct a tariff and order its adoption by the company when we find existing rates to be unreasonable.

The Commission is of opinion that the consumers are entitled to an immediate reduction. However, we are bound by the holding of the Superior Court in *Chambersburg Gas Company v. Public Service Commission*, 120 Pa. Superior Ct. 206, 217, that a utility cannot be required to file tariffs covering past service periods. Although this decision interpreted the terms of The Public Service Company Law, the corresponding provisions of the Public Utility Law relative to tariffs are almost identical in wording and would undoubtedly receive the same construction. Therefore, the reductions herein ordered will appear on bills covering service rendered after the effective date of the tariff filed pursuant hereto.

From a review of the record and the consumption data [fol. 82] obtained from the respondent, we find that the following tariff is reasonable and proper for the purpose of temporary rates. In our interim report and order of July 13, 1937, we pointed out that modification thereof would largely depend upon revenues and consumer classifications. Consumer data and experience with the follow-

ing schedules may indicate that further adjustments are proper.

We find that the following schedule of temporary net rates is proper and reasonable, and should be made effective by Edison Light and Power Company, respondent:

Domestic Service: (This schedule should be made available to domestic consumers now served under schedules RL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50c
Next 19 Kwh. per month 4c per Kwh.	
Next 30 Kwh. per month 3½c per Kwh.	
Next 60 Kwh. per month 3c per Kwh.	
Next 80 Kwh. per month 2½c per Kwh.	
Over 200 Kwh. per month 1½c per Kwh.	

Commercial Service: (This schedule should be made available to commercial consumers now served under schedules GL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50c
Next 89 Kwh. per month 4c per Kwh.	
Next 200 Kwh. per month 3c per Kwh.	
Next 700 Kwh. per month 2½c per Kwh.	
Next 1000 Kwh. per month 2c per Kwh.	
Over 2000 Kwh. per month 1½c per Kwh.	

The following present rate schedules, as contained in Tariff Pa. P. U. C. No. 8, should be cancelled: RL; A; B; GL; and HC. The other schedules of Tariff Pa. P. U. C. No. 8 should remain effective, except as hereinafter ordered modified.

The Company should also apply a Commission Adjustment Multiplier of 0.70 to all net monthly bills covering energy, and all related billed items including connected load, demand, power factor and service charges rendered for service after the effective date of the tariff supplement filed in accordance with this report and order, to any consumer billed under the following existing tariff schedules, which shall be included in the tariff filed pursuant to this order: Tariff Schedule P-1; TS; SL; M; and MCY. Due to the failure of the Company to supply consumer data for those

schedules, the Commission must, in the public interest, adopt the Commission Adjustment Multiplier as above set forth in order to arrive at an equitable reduction; therefore,

Now, to wit, July 27, 1937, it is ordered: That the interim report and order of July 13, 1937, imposing temporary rates in this proceeding, be and is hereby rescinded.

[fol. 83] It is further ordered: That Edison Light and Power Company, respondent, shall within ten (10) days of date of service of this order file a tariff supplement, effective upon one (1) day's notice to the public and this Commission, effecting a reduction of approximately \$435,000 in its annual gross operating revenues, by the establishment of the following rates or rate adjustments:

Domestic Service: (This schedule shall be made available to domestic consumers now served under schedules RL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50¢
Next 19 Kwh. per month	4¢ per Kwh.
Next 30 Kwh. per month	3½¢ per Kwh.
Next 60 Kwh. per month	3¢ per Kwh.
Next 80 Kwh. per month	2¢ per Kwh.
Over 200 Kwh. per month	1½¢ per Kwh.

Commercial Service: (This schedule shall be made available to commercial consumers now served under schedules GL, A, B, and HC)

Minimum charge per month, for which consumer shall be allowed 11 Kwh.	50¢
Next 89 Kwh. per month	4¢ per Kwh.
Next 200 Kwh. per month	3¢ per Kwh.
Next 700 Kwh. per month	2½¢ per Kwh.
Next 1000 Kwh. per month	2¢ per Kwh.
Over 2000 Kwh. per month	1½¢ per Kwh.

It is further ordered: That the following present rate schedules, as contained in Tariff Pa. P. U. C. No. 8, shall be cancelled: RL; A; B; GL; and HC.

It is further ordered: That respondent company shall apply a Commission Adjustment Multiplier of 0.70 to all net monthly bills covering energy, and all related billed items including connected load, demand, power factor and service

charges rendered for service after the effective date of the tariff supplement filed in accordance with this report and order, to any consumer billed under the following existing tariff schedules, which schedules shall be included in the tariff filed pursuant to this order: Tariff Schedules P-1; TS; SL; M; and MCY.

It is further ordered: That the following schedules of Tariff Pa. P. U. C. No. 8, not hereinabove ordered cancelled or modified, shall remain effective: PR: P-2; P-4, P-5; CBH; AS; OPH; BLI.

Pennsylvania Public Utility Commission, (Signed)
Thomas C. Buchanan, Acting Chairman.

Attest: (S.) Joseph P. Sheridan, Secretary.

[fol. 84] EXHIBIT "B" TO COMPLAINT (Exhibit 1)

Final Writing

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Complaint Docket No. 11108

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

EDISON LIGHT AND POWER COMPANY

INTERIM REPORT AND ORDER IMPOSING TEMPORARY RATES

By the COMMISSION:

This proceeding is an inquiry and investigation instituted on the motion of the Commission to determine the reasonableness of the rates of respondent, Edison Light and Power Company. Several hearings have been held in the proceeding, some prior to June 1, 1937, the effective date of the Public Utility Law, and others subsequent to that date.

Section 310, Article III of the Public Utility Law provides generally that the Commission may, in any proceeding involving the rates of a public utility, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by such public

utility, pending the final determination of such rate proceeding. At the hearing held June 9, 1937, in this proceeding, Commissioner Beamish notified the respondent company of his intention to report to the Commission that, in his opinion, the appropriate time had arrived for the Commission to consider the imposition of temporary rates. Subsequently, the respondent was given formal notice that temporary rates might be imposed, and was ordered to appear on June 23, 1937, to present such evidence in connection with temporary rates as might seem proper. Hearing was held on June 23, 1937, pursuant to the order, and the company had stated of record that it has no desire to present further evidence relating to temporary rates.

Some time will necessarily elapse before final argument in this proceeding and final determination of the reasonableness of the rates of respondent company. It is therefore the opinion of the Commission, from a study of the record evidence, that the public interest requires that temporary rates be immediately fixed, determined and prescribed, pending the final determination of the instant rate proceeding, and that a proper basis for the prescription of such temporary rates is the sum of \$5,250,000.

For the purpose of determining temporary rates, the Commission will apply a rate of 6% and will allow \$315,000 for return.

The operation and maintenance expense of the respondent company for the year ended December 31, 1936, as re-[fol. 85] ported to the Commission, amounted to \$919,110. An item of \$38,710 charged by the company to Regulatory Expenses should be deducted from the reported expense figure. This item consists largely of rate case expenses incurred in the instant proceeding, and we do not believe that the ratepayers of the respondent company should be required to bear these expenses, since, in our opinion, the rates charged by the company are unreasonable and excessive. The respondent utility itself admits that some reduction in rate would be necessary, even on the basis used by it in the presentation of its evidence.

For the purpose of temporary rates, we will allow an annual depreciation charge of \$120,400, the precise amount reported by the company as charged on its books for the year ended December 31, 1936.

In its annual report for the year ended December 31, 1936, the respondent utility records tax payments in the amount of

\$332,500. We will reduce this item to a rounded figure of \$180,000 since a recalculation of tax payments on the basis of the reduced allowable revenue gives a resultant figure of approximately \$180,000.

The actual gross revenues of respondent, as reported to the Commission for the year ended December 31, 1936, were \$2,020,000. The sum of the allowances above made for return, operating expenses, depreciation and taxes is \$1,495,800. The arithmetical difference between the allowable and actual gross revenues is \$524,200. The consumers of respondent are therefore entitled to a substantial reduction.

For the year ended December 31, 1936, the company reported gross revenues of \$2,020,044, received in return for 64,255,466 kilowatt hours, showing an average rate of 3.14¢ per kilowatt-hour. The Commission has analyzed each classification of consumers under the respondent company's present tariff, and has found that the average rate per kilowatt-hour in certain classifications exceeds the over-all average of 3.14¢. We are, therefore, of the opinion that the reduction should accrue to those classes of consumers who are now paying higher than the general average rate of energy. To this end, we will order the application of a Commission Adjustment Multiplier of 0.70, which is a decimal fraction expressing the arithmetical correction necessary to convert the 1936 gross revenue of \$1,451,383, derived from the schedules to be corrected, to a lower figure of \$1,016,393, resulting in an annual reduction of \$435,000. The Company will apply the said Commission Adjustment Multiplier of 0.70 to the net monthly bills of all consumers billed under tariff schedules which produced an average revenue per kilowatt-hour in excess of 3.14¢ during the year ended December 31, 1936, thus accomplishing a reduction of 30% in the bills of the consumers affected.

This reduction is, of course, subject to increase or decrease as circumstances may indicate. We are not to be understood as expressing an opinion concerning permanent or final rates, nor as promulgating a standard which is not subject to modification either because of the provisions of the tariff which the company must file within 60 days after June 1, 1937, to comply with Commission Temporary Regulation No. 2, or other factors or principles which may command our attention. Under the provisions of Section 310 (c) of the Public Utility Law, the Commission may

fix, determine and prescribe temporary rates every month, or at any other interval, if it be of opinion that the public interest so requires, and exercise of the power there conferred may result from any substantial change in condition which comes to the attention of the Commission. The amount and character of such possible modification will, to a large extent, depend upon revenues and consumer classifications, and we will therefore order respondent to submit supporting consumer and revenue data with any tariff filed in purported compliance with Commission Temporary Regulation No. 2; therefore,

Now, to wit, July 13, 1937, it is ordered: That Edison Light and Power Company, respondent, shall, within ten (10) days after service of this order, file a tariff supplement effective on one (1) day's notice to this Commission and the public, effecting a reduction of approximately \$435,000 in its annual gross operating revenue by the application of a Commission Adjustment Multiplier indicated on all bills of zero point seventy (0.70) to all net monthly bills covering energy and all related billed items, including connected load, demand, power factor and service charges, rendered after the date of this order to any consumer billed under the following tariff schedules:

Tariff P. U. C. Pa. No.	Tariff Schedule Code No. or letter	Consumer Classification
8	RL	Domestic Service.
8	A	City Lighting Service.
8	B	Suburban Lighting Service.
8	GL	General Lighting Service.
8	P-I	Retail Power.
8	HC	Heating & Cooking Service.
8	TS	Temporary Service.
8	SL	Series Tungsten Lamps.
8	M	Municipal St. Ltg.
8	MCY	Municipal St. Ltg. (City of York only).

It is further ordered: That, with any tariff filed in purported compliance with Commission Temporary Regulation No. 2, Edison Light and Power Company file supporting

consumer data to show the anticipated revenues under such tariff from each class of consumers.

Pennsylvania Public Utility Commission, (Signed)
D. J. Driscoll, Chairman.

Attest: (Signed) Joseph P. Sheridan, Secretary.

[fol. 87]

EXHIBIT II TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF PENNSYLVANIA

EDISON LIGHT & POWER COMPANY, a Corporation,
Complainant,

v.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J.
BEAMISH, Guy K. Bard, and Donald Livingston, Indi-
vidually and as Constituting the Pennsylvania Public
Utility Commission, Respondents

Before Davis, Circuit Judge, and Johnson and Watson,
District Judges

DAVIS, Circuit Judge:

This action concerns the Lawfulness of a temporary rate for a public utility under authority of a state statute. The Edison Light & Power Company, a public utility corporation, is engaged in supplying electric energy in and about the City and County of York, Pennsylvania. The respondents are individuals, constituting the Pennsylvania Public Utility Commission, hereinafter referred to as the commission. The complainant brought this suit in a statutory court, pursuant to section 266 of the Judicial Code to enjoin the enforcement of an order of the commission dated July 27, 1937, requiring the complainant to adopt temporary rates for its electric service in accordance with the provisions of section 310 (a) and (e) of the Public Utility Law of Pennsylvania which went into effect June 1, 1937.

The order of July 27, 1937, is the commission's second order imposing these temporary rates upon the company. The first one was dated July 13, 1937, but on account of a decision on July 15, 1937, of the Superior Court of Pennsyl-

vania in the case of Pennsylvania Power & Light Company, v. Public Service Commission, 193 Atl. 427, that order was rescinded, is no longer in this case, and the one of July 27, 1937 was substituted.

The investigation to determine the reasonableness of the rates charged by the complainant was instituted on January 27, 1936 by the Pennsylvania Public Service Commission, predecessor of the respondent commission. Many hearings were held by it; nearly a thousand pages of testimony was taken and volumes of exhibits were admitted in evidence. The case was closed on June 23, 1937.

The first order of July 13, 1937 reduced the gross operating revenue of the complainant company \$435,000 a year. The second order of July 27, 1937 likewise reduced the annual gross operating revenue of the complainant by \$435,000.

The order of the commission was made pursuant to section 310 (a) and (e) of the Pennsylvania Act of June 1, 1937. These subsections provide as follows:

“Section 310. Temporary Rates.—(a) The commission [fol. 88] may in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint after reasonable notice and hearing, if it be of opinion that the public interest so requires, immediately fix, determine and prescribe temporary rates to be charged by such public utility pending the final determination of such rate proceeding. Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service and if the duly verified reports of such public utility to the commission do not show such original cost less accrued depreciation of such property the commission may estimate such cost less depreciation and fix, determine and prescribe rates as hereinafter provided.”

“(e) Temporary rates so fixed, determined and prescribed under this section shall be effective until the final determination of the rate proceeding, unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined and prescribed under this section the commission shall consider the effect of such

rates in fixing, determining and prescribing rates to be thereafter demanded or received by such public utility on final determination of the rate proceedings. If upon final disposition of the issues involved in such proceedings the rates as finally determined are in excess of the rates prescribed in such temporary order then such public utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

The complainant contends that these subsections violate the provisions of the Fourteenth Amendment to the Constitution of the United States.

But assuming these subsections to be constitutional, complainant says that the order made pursuant to them is unconstitutional in that it is confiscatory because it "fixes, determines and prescribes" rates which do not yield a fair return on the fair value of its property devoted to public use.

It should be stated at the outset that this court is not a rate-making body. The function of fixing the rates of a public utility ultimately rests with the Commonwealth. It has the right to control private corporations, whose business, necessarily monopolistic in character, is affected with a public interest. That control, where the fixing of rates is involved, is exercised through one of its agencies, the Public Utility Commission. In exercising this control, the rights of both the public and the corporation must be considered. The company is entitled to a fair return on a fair value of its property devoted to public use. It cannot be so high as [fol. 89] to exceed the value of the service to the consumer and cannot be so low as to confiscate the property devoted to that service. *Public Service Railway Co. vs. Board of Public Utility Commissioners*, 276 Fed. 979, 984. In other words the company is entitled to ask a fair return upon the value of that which it employs for the public convenience, and the public is entitled to demand that no more be exacted from it than the services rendered are reasonably worth. Neither is entitled to anything more. *Smyth v. Ames*, 169 U. S. 466, 547. *Philadelphia City Passenger*

Railway Co. v. Public Service Commission (Pa.) 114 Atl. 642, 648.

We are concerned here solely with the allowance or disallowance of a preliminary injunction, and the determination of that question depends upon whether or not the rates prescribed are confiscatory. Considered from one rate base they may be fair and reasonable and considered from another, they may not be. The complainant, being entitled to a fair return on the fair value of all its property used in the service of the public, the question arises as to what property constituted the "basis" to which the commission applied a temporary rate of 6 per centum.

Section 310 (a) of the Act provided as to temporary rates that:

"Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service."

It was the duty of the commission to make such findings or to furnish such facts as would inform the court on a review as to whether or not those who had been affected by its determination had been deprived of their legal or constitutional rights. In the case of *Pennsylvania Power & Light Co. v. Public Service Commission*, *supra*, the court said:

"This is but a recognition of a fundamental principle that where the legislature delegates power to an extra-judicial tribunal appointed to determine property values or rights and the tribunal acts in such matters, it must make such findings that on a review by the court it is possible to determine whether one affected by such determination has been deprived of legal rights."

In the case of *Ohio Bell Telephone Co. v. Public Utilities Commission of Ohio*, 301 U. S. 292, 300, the court laid down the law as follows:

"The fundamentals of a trial were denied to the appellant when rates previously collected were ordered to be refunded upon the strength of evidential facts not spread upon the record. . . ."

"Upon the strength of these unknown documents refunds have been ordered for sums amounting into millions, the Commission reporting its conclusion, but not the underlying proofs. The putative debtor does not know the proofs to-day. This is not the fair hearing essential to due process. It is condemnation without trial."

"From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the commission took judicial notice and [fol. 90] on which it rests its conclusion. Not only are the facts unknown; there is no way to find them out.

"To put the problem more concretely; how was it possible for the appellate court to review the law and the facts and intelligently decide that the findings of the commission were supported by the evidence when the evidence, that it approved was unknown and unknowable?"

In the case of *United Railways v. West*, 280 U. S. 234, 250, the court said:

"What annual rate will constitute just compensation depends upon many circumstances and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts."

The same court in the case of *Smyth v. Ames*, 169 U. S. 466, 546, many years ago stated some of the "relevant facts" which must be considered in fixing a rate:

"And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

To these elements should be added "going concern value." In *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 165, the court, in speaking of this value said:

"This element of value is a property right, and should be considered in determining the value of the property, upon

which the owner has a right to make a fair return when the same is privately owned although dedicated to public use. . . . Included in going value as usually reckoned is the investment necessary to organizing and establishing the business which is not embraced in the value of its actual physical property."

The Commission, however, took a rate base as set forth in paragraph 10 of its answer, of \$5,900,000 which represents an allowance of \$5,350,000 for reproduction cost new less accrued depreciation, plus \$150,000 for working capital and \$400,000 for going concern value. The operating revenue for 1936 was \$2,020,044. From this the commission deducted operating expenses of \$880,400, retirement expenses of \$120,422 and taxes of \$218,000, leaving a net profit of \$801,222. The commission then on July 2, 1937 prescribed a temporary rate of 6.20 per cent which will yield a return of \$366,222, and produce a reduction in the annual revenue of the complainant of about \$435,000.

But the commission failed to deduct from the gross annual revenue \$114,355 of other expenses, taxes, pay roll increases, pensions to employees, etc. which for the year 1936 would reduce the net return to \$213,067. This represents a rate of 3.61 per cent on the rate base of \$5,900,000 used by the commission, and for the year ended June 30, [fol. 91] 1937 a return of \$214,245, on a rate of 3.63 per cent. If other elements of capital value had been considered by the commission which under the rules laid down by the Supreme Court it must do in fixing a rate base, both the return and rate would accordingly have been less. Such rates are clearly confiscatory. A rate of 7 per cent. was allowed by The Pennsylvania Public Service Commission in 1936. The complainant produced substantial proof to show that a reasonable rate for it is at least 7½ per cent.

Does the fact that the rates fixed are only temporary save the order from the inhibition of the constitution? We think it does not and that this question is answered by the case of *Prendergast vs. New York Telephone Company*, 262 U. S. 43, 49, where the court said:

"Nor did the fact that the orders of the Commission merely prescribed temporary rates to be effective until its final determination, deprive the Company of its right to relief at the hands of the court. The orders required the

new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination; and if the rates prescribed were confiscatory the Company would be deprived of a reasonable return upon its property during such period, without remedy, unless their enforcement should be enjoined. Upon a showing that such reduced rates were confiscatory the Company was entitled to have their enforcement enjoined pending the continuance and completion of the rate-making process."

It has been argued that the recoupment provision of the Pennsylvania Act avoid the infirmity in the New York Act which the court pointed out in the *Prendergast* case. This argument in effect means that it is proper and legal to violate the constitution if at some future time that violation may be corrected wholly or in part. In other words, it is perfectly all right and permissible to take one's money by force if by and by it may be partly returned to him. If that is so, how long may the constitution be violated during which time the injured party is without remedy? May it be for a month, as provided in section 310 (c) or for a trial period of six months or a year as provided in section 310 (d) of the Act? Such interpretation of the constitutional requirement is unsound.

Further, the provision for recoupment is not entirely effective. It does not provide for interest on the money, which the company loses during the trial period, while the final rates are being fixed, and if it did so require, considerable portions of the principal lost might never be recovered. The Act provided that if the final rates are higher than the temporary rates, "then such public utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined" the sum lost on account of the temporary rates. But if the consumer discontinues the service or moves out of the territory, as doubtless in a shifting population will be frequently done, the utility in many cases will be absolutely without remedy, for section 305 of the Act abolishes "deposits to secure future payments."

[fol. 92] The commission relies almost entirely upon the case of the *Bronx Gas & Electric Co. v. Maltbie*, 271 N. Y. 364; 3 N. E. 2nd Series, 512, to escape the rule laid down in the *Prendergast* case. In the *Bronx Gas* case the court said

that "the sole question for this court to determine is whether the Public Service Commission can legally provide a temporary rate for electric service, pending the determination of the final rate." Of course, it can if it considers those elements which the Supreme Court has always said are necessary in order to form a proper rate base and makes an order that is not confiscatory. The court further said that if this were done it would prevent the fixing of a temporary rate for it would be a final rate. This does not follow. The elements which the Supreme Court in numerous cases has said must be considered in fixing a fair rate, need not be considered with the same care, particularity and thoroughness with which they must be considered in fixing a final rate; but they must be considered to the extent that will enable the commission to avoid fixing a confiscatory, temporary rate, for neither the constitution or the Supreme Court has made any exception in fixing a confiscatory rate because the rate is temporary. In the Bronx Gas case, the New York court said that the Prendergast case decided several things, one of which was that, "the temporary rate must give a fair return upon *all those elements* of capital value which must be considered in fixing the final rate." That is exactly what we understand the case to have decided and that required the commission in the case at bar in fixing the temporary rate to consider the necessary elements of capital value other than original cost less accrued depreciation sufficiently to avoid fixing a confiscatory temporary rate. The decision in the Bronx case in effect differs with the law declared in the Prendergast case.

In the case of Laclede Gas Light Co. v. Missouri Public Service Co., 8 Fed. Supp. 806, the court said:

"It is earnestly urged by defendants and intervenor that the Commission's order should be permitted to go into effect because it is intended only to be temporary but, as we have pointed out, the order itself is not limited. Moreover, the constitutional prohibition against the taking of property without due process of law contains no exception permitting a taking of some property or a taking during a limited period of time."

Speaking for myself alone, it seems to me that subsections 310 (a) and (e) of the Act are unconstitutional because they permit the commission to fix and maintain rates as low as 5 per cent upon the original cost less accrued depreciation.

without considering other elements of capital value which the Supreme Court has often said must be done in fixing a fair rate on a fair value of property used and useful in the public service. The test of the constitutionality of an act is not what a rate-making body does under it, but what it is permitted to do.

Under section 310 (c) of the Act the commission is authorized to fix temporary rates "every month or at any other [fol. 93] interval" and it may in this case at any time give attention to other elements of capital value than original cost less depreciation and fix a legal rate.

And now, to wit, October 15, 1937, the Pennsylvania Public Utility Commission is hereby enjoined and restrained from in any manner enforcing or attempting to enforce its order of July 27, 1937, establishing the rates set forth therein.

By the Court.

(Signed) J. Warren Davis, Circuit Judge.

[fol. 94]

EXHIBIT III TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF PENNSYLVANIA, JUNE TERM, 1937

In Equity. No. 1289

EDISON LIGHT AND POWER Co., a Corporation, Complainant,

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard and Donald Livingston, Individually and as Constituting the Pennsylvania Public Utility Commission, Respondents

Bill In Equity for Injunction

OPINION

This is a suit in equity to restrain the Pennsylvania Public Utility Commission from enforcing an order made by it pursuant to section 310 of the Pennsylvania Public Utility Law of 1937, fixing temporary rates for electricity on the grounds that the statute on which the temporary rates are

based is unconstitutional and that the order fixing the temporary rates is also unconstitutional and invalid.

On January 27, 1936, the Pennsylvania Public Service Commission, predecessor of respondents, instituted on its own motion an investigation, for the purpose of determining the reasonableness of rates charged and to be charged by the Complainant for electric service. Numerous hearings were held by the Public Service Commission and later by respondents. Voluminous testimony and exhibits were introduced and the hearings were concluded on June 23, 1937. Nothing remains to be done except final argument and the determining of final rates by the Public Utilities Commission, after consideration of the record.

At the conclusion of the final rate hearings before the Public Utilities Commission, a hearing was held by it to determine whether temporary rates should be prescribed. The entire record of the permanent rate proceeding was incorporated as part of the temporary rate proceeding. On July 13, 1937 the Public Utilities Commission ordered the Complainant to put into effect temporary rates for electricity, pending a determination of final rates, which would effect a reduction of approximately \$435,000.00 in its annual gross operating revenue. The Public Utility Commission found from a study of the record evidence, that a proper basis for the prescription of temporary rates is \$5,250,000 and for the purpose of determining temporary rates, applied a rate of six per centum, thereby allowing \$315,000.00 for return. It was stated that on the basis of the allowance, the arithmetical difference between the allowable and actual gross revenue during the year ended December 31, 1936 was \$524,000.00, but the actual reduction ordered was only [fol. 95] \$435,000.00. Pursuant to an opinion of the Superior Court of Pennsylvania in Pennsylvania Power and Light Co. vs. Public Service Commission, the Public Utility Commission made a second order on July 27, 1937 rescinding the first order but requiring the same rate reduction and fixing a schedule of temporary rates.

Due to the pendency of the proceeding before the Court, the Public Utility Commission has extended the effective date of the temporary rate order to October 15, 1937.

The contentions of the complainant are that Section 310 of the Public Utility Law, under which the temporary rate order was made, is contrary to the Fourteenth Amendment to the Constitution of the United States of America and

that the order also violates the Fourteenth Amendment by confiscating the property of complainant.

Two questions arise here, first, the constitutionality of Section 310, and secondly, the validity of the order of July 27, 1937, fixing the temporary rates.

Section 310 provides: "(a) The Commission may in any proceeding involving the rates of a public utility brought either upon its own motion or upon complaint after reasonable notice and hearing if it be of opinion that the public interest so requires immediately fix, determine and prescribe temporary rates to be charged by such public utility pending the final determination of such rate proceeding. Such temporary rates so fixed, determined and prescribed shall be sufficient to provide a return of not less than five per centum upon the original cost less accrued depreciation of the physical property (when first devoted to public use) of such public utility used and useful in the public service and if the duly verified reports of such public utility to the commission do not show such original cost less accrued depreciation of such property the commission may estimate such cost less depreciation and fix, determine and prescribe rates as hereinbefore provided.

"(b) If any public utility does not have continuing property records kept in the manner prescribed by the commission under the provisions of section five hundred two of this Act then the commission after reasonable notice and hearing may establish temporary rates which shall be sufficient to provide a return of not less than an amount equal to the operating income for the year ending December thirty-first one thousand nine hundred thirty-five or such other subsequent year as the commission may deem proper to be determined on the basis of data appearing in the annual report of such public utility to the commission for the year one thousand nine hundred thirty-five or such other subsequent year as the commission may deem proper plus or minus such return as the commission may prescribe from time to time upon such net changes of the physical property as are reported to and approved for rate-making purposes by the commission. In determining the net changes of the physical property the commission may in its discretion deduct from gross additions to such physical property the amount charged to operating expenses for depreciation or in lieu thereof it may determine such net changes by de-

[fol. 96] ducting retirements from the gross additions Provided That the commission in determining the basis for temporary rates may make such adjustments in the annual report data as may in the judgment of the commission be necessary and proper.

“(c) The commission may in the manner hereinbefore set forth fix, determine and prescribe temporary rates every month or at any other interval if it be of opinion that the public interest so requires and the existence of proceedings begun for the purpose of establishing final rates shall not prevent the commission from changing every month or at any other interval such temporary rates as it has previously fixed, determined and prescribed.

“(d) Whenever the commission upon examination of any annual or other report or of any papers, records, books or documents of the property of any public utility shall be of opinion that any rates of such public utility or producing a return in excess of a fair return upon the fair value of the property of such public utility used and useful in its public service the commission may by order prescribe for a trial period of at least six months which trial period may be extended for one additional period of six months such temporary rates to be observed by such public utility as in the opinion of the commission will produce a fair return upon such fair value and the rates so prescribed shall become effective upon the date specified in the order of the commission. Such rates so prescribed shall become permanent at the end of such trial period or extension thereof unless at any time during such trial period or extension thereof the public utility involved shall complain to the commission that the rates so prescribed are unjust or unreasonable. Upon such complaint the commission after hearing shall determine the issues involved and pending final determination the rates so prescribed shall remain in effect.

“(e) Temporary rates so fixed, determined and prescribed under this section shall be effective until the final determination of the rate proceeding unless terminated sooner by the commission. In every proceeding in which temporary rates are fixed, determined and prescribed under this section the commission shall consider the effect of such rates in fixing, determining and prescribing rates to be thereafter demanded or received by such public utility on

final determination of the rate proceeding. If upon final disposition of the issues involved in such proceeding the rates as finally determined are in excess of the rates prescribed in such temporary order then such public utility shall be permitted to amortize and recover by means of a temporary increase over and above the rates finally determined such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect."

The above provisions of the Pennsylvania Statute follow closely the temporary rate provisions of the recent New York State Law. The New Act "authorizes," while the Pennsylvania Act "requires" the commission to consider [fol. 97] the effect of the temporary rates in fixing the permanent rates.

The question of the constitutionality of the temporary rate provisions of the New York statute was before the Court of Appeals of New York in the cases of Bronx Gas & Electric Co. vs. Maltbie, and Yonkers Electric Light & Power Co. vs. Maltbie. That court, in the opinion filed July 8, 1926, 3 N. E. (2d) 512, 271 N. Y. 364, held that the statute met all the requirements of the Constitution. The reasoning and conclusion in that case applies equally to the case now before this Court.

Prior to the enactment of the statute considered in Bronx Gas & Electric Co. vs. Maltbie, the validity of temporary rates under a previous New York statute was before the Supreme Court of the United States in Prendergast vs. N. Y. Tel. Co. 262 U. S. 43. These temporary rates were put into effect until final rates were fixed, but there was no provision for recoupment in case the temporary rates were too low. The Supreme Court accordingly held that the temporary rates, so long as they were in effect, were in reality final rates, and if they were confiscatory, the utility company would be deprived of a reasonable return upon its property during such period. Accordingly so long as a temporary rate provided no means for recoupment, the temporary rate must satisfy the same requirements as a final rate, and must give a fair return upon all elements of capital value which must be considered in making a final rate. The purpose of a Temporary rate is to force a public

utility to give the consumers the benefit of reasonable rates pending the proceedings to fix a final rate. These rate proceedings often last for years, and meanwhile, if no temporary rates are fixed, the public is often required to pay unreasonable rates and the utilities are meanwhile permitted to make unreasonable profits. In making temporary rates where recoupment is provided for it may not be necessary for the commission to consider all the elements of fair values which must be considered in establishing final rates, but it must consider all the elements required by the statute and such elements as will provide a fair return so as to avoid confiscation. Such elements of fair value as are considered in making temporary rates should be stated in the order fixing temporary rates.

It was the evident purpose of the Pennsylvania Legislature, in passing this Act, to meet the criticism of the Prendergast case, and to remove the burden placed upon the consuming public. The Act provides that the temporary rate shall provide a return of not less than five per centum upon the original cost, less accrued depreciation, of the physical property of the public utility, used and useful in the public service. The Public Utility Commission may fix a temporary rate above the five per centum limitation, if the facts warrant; but they cannot go below five per centum even though a reasonable rate might be less than five per centum. This five per centum rate is not the standard set for the Public Utility Commission; it is the lowest limit which may be fixed. It is thus a safeguard for the benefit of the utility. While the method of fixing a temporary rate does not provide for all the elements of fair [fol. 98] value that are necessary to be considered in fixing a final rate, it provides for one of the important elements. The result can be speedily attained and is not altogether based upon opinion and speculation.

The Act requires the Public Utility Commission, in fixing the final rates, to consider the experience of the temporary rates, and if the final rates are in excess of the temporary rates, the public utility is permitted to recover the difference by temporary rate increases. If any temporary loss is suffered, the difference is made up to the utility in the final rates, and thus fair rates are secured, confiscation avoided, and the Constitutional requirement met. This remedy of the utility against the consumers is no different than the remedy given to the consumers against the utility. If the


one meets the Constitutional requirements, so does the other. As was said in the case of *Bronx Gas & Electric Co. vs. Maltbie*: "If the courts required the public utility company to put up a bond to pay back to the consumers the overcharges which it had exacted, pending a hearing, why was it not just as feasible and legal to turn the remedy about and provide that the consumers or the public should make good to the company the loss which it may have sustained in temporarily exacting too little. This is what our Legislature has done, and this we think is the meaning which we must give to its language, if it is to have any sense at all in the light of the past." The Court of Appeals further said: "True it is that all the consumers paying the final rate, including the take-up, may not be the same as those who paid the temporary rate. A few consumers may be new customers paying what the consumer should have paid. Such instances are of minor importance; the percentage must be very small. We can never work our institutions of government if we refine matters to such an extent that we have to consider all these little details. The Constitution expressed fundamental principles, and if in the main these have been observed this is all that can be required. Besides, when we speak of the consumer-the customer we mean the public, not individuals. See *San Diego Land and Town Co. vs. Jasper*, 189 U. S. 439, 23 S. Ct. 571, 47 L. Ed. 89, 892."

The Court of Appeals of New York finally concluded: "We, therefore, are of the opinion that this law is not unconstitutional; that it meets the defects in prior procedure, and affords the company ample protection as well as the consumer. It is a fair attempt to meet the time element, which is necessary to be considered in rate-fixing hearings."

I agree with the reasons and conclusions of the New York State Court of Appeals and I am of the opinion that the temporary rate provisions of the Pennsylvania Public Utility Law are Constitutional and afford ample protection to the complainant.

Secondly, the validity of the order of July 27, 1937, fixing the temporary rates. The order does not state any element of fair value on which the temporary rates were fixed. A reviewing court is therefore unable to determine from the order whether any elements and if any what elements of fair value were considered as required by the statute. Since the order of July 13, 1937 was rescinded, it is therefore of

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[fol. 99] no effect and cannot now be considered by this Court. I do not concur in granting a permanent injunction but I would stay the collection of temporary rates for a period of fifteen days to afford the commission an opportunity to state in its order of July 27, 1937, the elements of fair value on which the temporary rates were based.

(Signed) Albert W. Johnson, U. S. District Judge.

[fol. 100]

EXHIBIT IV TO ANSWER

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA, JUNE TERM, 1937

No. 1289

EDISON LIGHT & POWER COMPANY, a Corporation, Complainant,

vs.

DENIS J. DRISCOLL, THOMAS C. BUCHANAN, RICHARD J. BEAMISH, Guy K. Bard, and Donald Livingston, Individually and as Constituting the Pennsylvania Public Utility Commission, Respondents

CONCURRING OPINION

With the conclusion reached in the opinion of the Court I am fully in accord, but I do not agree with the reasoning by which that conclusion is reached. In my opinion the Pennsylvania statute itself is not unconstitutional. That a state statute permitting a regulatory commission to fix temporary rates to be charged by a public utility is permissible so long as it does not result in confiscation has been recognized by the Supreme Court. *Prendergast vs. N. Y. Telephone Co.*, 262 U. S. 43, *Public Service Commission of Wisconsin vs. Wisconsin Telephone Co.*, 289 U. S. 67. I agree with the reasoning in *Yonkers Electric Light & Power Co. vs. Public Service Commission*, 271 N. Y. 364, 3 N. E. (2d) 512, in which the Court of Appeals of New York found not to be unconstitutional the Public Service Law which contains similar provisions as to the fixing of temporary rates by the Public Service Commission of New York. In the

Yonkers Electric Light & Power Co. case the Court said with reference to the Public Service Law:

"It meets the defects in prior procedure, and affords the company ample protection as well as the consumer. It is a fair attempt to meet the time element, which is necessary to be considered in rate-fixing hearings."

The remaining question is whether the order of the Commission dated July 27, 1937, violates the Fourteenth Amendment to the Constitution.

The order of the Commission dated July 27, 1937, is the only order of the Commission before the Court for consideration. A prior order and report dated July 13, 1937, were rescinded. The order dated July 27, 1937, directs the Complainants to file a tariff effecting a reduction of approximately \$435,000.00 in its annual gross revenues by the establishment of certain rates set forth in the order, which tariff the Commission found to be reasonable and proper for the purpose of temporary rates and that is all. The Commission made its conclusion but did not find any basic facts. It made no findings whatever from which it is possible for the [fols. 101-102] Court to determine whether one affected by such determination has been deprived of legal rights. Unaided by findings this Court is certainly not called upon to search the voluminous record to find a basis for the Commission's order, which might not be the basis, if any, upon which the Commission relied.

In *Pennsylvania Power & Light Co. vs. Public Service Commission*, 193 Atlantic Reporter 427, the Court said:

"This is but a recognition of a fundamental principle that where the Legislature delegates powers to an extra-judicial tribunal appointed to determine property values or rights and the tribunal acts in such matters, it must make such findings that on a review by the Court it is possible to determine whether one affected by such determination has been deprived of legal rights."

In *Ohio Bell Telephone Co. vs. Public Utilities Commission of Ohio*, 301 U. S. 292, Mr. Justice Cardozo in the opinion of the Court, said:

"The fundamentals of a trial were denied to the appellant when rates previously collected were ordered to be

refunded upon the strength of evidential facts not spread upon the record.

"Upon the strength of these unknown documents refunds have been ordered for sums mounting into millions, the Commission reporting its conclusion, but not the underlying proofs. The putative debtor does not know the proofs today. This is not the fair hearing essential to due process. It is condemnation without trial.

"From the standpoint of due process—the protection of the individual against arbitrary action—a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial notice and on which it rested its conclusion. Not only are the facts unknown; there is no way to find them out."

Clearly it was the duty of the Commission to make findings of fact as to the basis upon which the rate reduction was ordered and not having done so its action was arbitrary and violates the due process clause of the Fourteenth Amendment of the Federal Constitution.

In fixing temporary rates the Commission should, in my opinion, consider those elements which the Supreme Court has said must be considered in fixing a fair rate. *Smyth v. Ames*, 169 U. S. 466, 546; *Des Moines Gas Co. vs. Des Moines*, 238 U. S. 153, 165. These need not be considered with the same care, particularity and thoroughness with which they must be considered in fixing final rates but they must be considered to such an extent that confiscatory temporary rates will be avoided. In most cases and certainly in this case such a requirement will not place any extra burden upon the Commission and should not cause any unreasonable delay.

I express no opinion as to whether the rates set forth in the order of July 27, 1937, might be shown to be reasonable and proper but, in my opinion, as the record now stands the only course open to this Court is to enter a decree enjoining the Pennsylvania Public Utility Commission from enforcing its order of July 27, 1937.

(Signed) Albert L. Watson, District Judge.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE
COMMONWEALTH OF PENNSYLVANIA

THE PUBLIC SERVICE COMMISSION OF THE
COMMONWEALTH OF PENNSYLVANIA,

vs.

EDISON LIGHT AND POWER COMPANY,

C. 11108-36.

Inquiry and investigation upon the Commission's own motion for the purpose of determining the fairness, reasonableness and justness of the rates, charges and regulations of the respondent company, as contained in its tariff Electric P.S.C. Pa. No. 8, and the supplements thereto. Initial hearing.

Hearing held at the offices of the Public Service Commission, Harrisburg, Pa., on Wednesday, October 28, 1936, at 10:30 o'clock a. m., Eastern Standard Time.

Present: COMMISSIONER STAHLNECKER, Presiding:

SAMUEL G. MILLER, Esq. (Harrisburg, Pa.), for The Public Service Commission, complainant;

J. HARRY LABRUM, Esq. (1507) Packard Building, Philadelphia, Pa.),

CHARLES H. ENGLISH, Esq. (Erie, Pa.), and

V. K. KEESEY, Esq. (York, Pa.), for the Edison Light and Power Company, respondent.

The Commissioner: Before we start the hearing, I want to say one thing about this matter.

Colloquy

We all know that these rate cases are apt to be very expensive and long drawn out for all parties concerned, and if there is any means of shortening the matter, I think it would be an advantage to all parties concerned—the rate payers, the company itself, and the Commission.

It has occurred to me that perhaps the parties, in the matter of the rate base, might agree upon something fairly definite after a conference between the parties, and I would like to ask counsel for the company and Mr. Miller for the Commission whether you can tell me, approximately, what you each propose to prove as a rate base in this case. What I am asking is, is what you expect to prove in that matter, if you are willing to so state. We might save considerable expense if we get a figure on the record. They, perhaps, might be far apart, and I do not want you to prejudice your case in any way.

Mr. LaBrum: This comes as a sort of surprise to us, frankly—

The Commissioner: I am not trying to take you unawares.

Mr. LaBrum: I understand that and we appreciate the cooperation that has been suggested by you, but before we could make any definite statement we would have to confer with our people, because we have not gotten far enough into the matter to determine what we feel is the proper rate base.

As you know, when the proposal was refused, we immediately started a corps of men working, so that we could have something on which we could base the facts for our opinion, and I would suggest that we be given an opportunity to confer with our people.

The Commissioner: Of course.

Mr. LaBrum: That would mean, of course, before we could put anything on the record, we would have to have an adjournment.

The Commissioner: I do not propose to have an adjourn-

Colloquy

ment. I want to go on with today's hearing and have the Commission put into the record the testimony of its accountants, under any circumstances.

Do I understand, Mr. LaBrum, that until these computations and analyses by your corps of men are completed, you will not be in a position to state what you feel the company will contend for as a rate base?

Mr. LaBrum: No; I don't mean exactly that, Mr. Commissioner. I mean, I am not in a position to state what our authorities feel is the proper rate base.

The Commissioner: What I am trying to get at is, when you made the offer of a reduction, weren't the officials of your company fully advised as to just what their rate base was in their estimation and what relation that bore to the amount of return on that rate base?

✓Mr. LaBrum: I think they were, but I am not sure, Mr. Commissioner, and that is the reason I suggest that I would have to confer with them.

The Commissioner: Are they here?

Mr. LaBrum: No; the officials of the company are not here.

The Commissioner: I would assume that when a company is asked by the Commission or it is suggested to it by the Commission that they should make a reduction to bring in a reasonable return allowed by the Commission that they are making it on what they believe to be the basis of the valuation and—

Mr. LaBrum: That is true. That was made by our accountants and they are not here today. I would like to discuss it with them.

Mr. Miller: Could you do it tomorrow, Mr. LaBrum, do you think?

Mr. LaBrum: Well, I am not sure.

Mr. Keesey: As Mr. LaBrum has said, it is a surprise to us, and we are not prepared to discuss it this morning.

R. A. McShea, Jr.—For Complainant—Direct

The Commissioner: I do not think it can be done tomorrow, because all the State officers will take a recess for two or three hours on account of the President's visit, but I take it that at the next hearing in this matter, we could go into it more fully and you would then be prepared to state your respective positions.

Mr. Miller: Mr. Commissioner, I do not think the Commission's figures would give a definite estimate. I have a general idea, of course.

The Commissioner: I will let the suggestion be suspended in mid air until the next hearing.

EVIDENCE ON BEHALF OF THE COMMISSION

R. A. McSHEA, JR., having been duly sworn, was examined and testified as follows:

By Mr. Miller:

Q. Will you give your name and address to the reporter, please? A. R. A. McShea, Jr., Harrisburg.

Q. By whom are you employed and in what capacity? A. I am employed in the Bureau of Accounts, Rates and Statistics of the Public Service Commission as a principal examiner.

Q. Are you a certified public accountant? A. I am.

Q. Are you a member of any accounting societies? (No answer.)

Mr. LaBrum: There is no question about his qualifications.

The Commissioner: Do you admit his qualifications?

Mr. LaBrum: Sure.

Mr. Miller: Mr. Commissioner, I would just like

R. A. McShea, Jr.—For Complainant—Direct

to ask him certain questions which are particularly relevant to this case.

The Commissioner: All right.

By Mr. Miller:

Q. Will you name some of the electric companies whose books you have examined? A. I have made detailed examinations of the books of Erie Lighting Company, which operates in Erie; Southern Pennsylvania Power Company which operates in portions of Chester and York Counties; Bradford Electric Company, which operates in McKean County; Harvey's Lake Light Company, which operates in a portion of Luzerne County; Pennsylvania Power & Light Company, which operates in 29 counties in eastern and central Pennsylvania; and Edison Light & Power Company, the present respondent.

Now, in addition to that I have made brief examinations for various purposes, specific purposes of the books of Duquesne Light Company, Pennsylvania Electric Company and Philadelphia Electric Company, the latter in connection with the Conowingo hydraulic power development.

Q. And what other duties have you performed for the Commission in connection with electric companies? A. I have prepared or assisted in the preparation of Commission opinions in rate cases, security cases and merger and consolidation cases. This involved detailed studies of the testimony and exhibits presented in those cases.

In the last two years I have spent a great deal of time preparing rate of return calculations involving nearly every type of public utility operating in Pennsylvania and have participated in many conferences held by the Commission or its representatives with representatives of the companies for the purpose of reviewing the rate situations of those companies and securing rate reductions or adjustments where possible.

R. A. McShea, Jr.—For Complainant—Direct

I had charge of the revision of the form for annual reports for electric companies in 1933; these forms becoming effective in 1934.

I have made office accounting studies of particular public service companies, including practically all of the electric companies operating in Pennsylvania to determine the approximate rates of return earned. These office studies were supplemented in many cases by field examinations of the accounts.

Q. When did you make your first examination of the respondent's books? A. Early in 1930—about February and March, I believe—I examined the books of the respondent for the period from 1913 to 1929, inclusive.

Again, in 1933, I made a detailed examination and brought the work down to the end of 1932.

We began the most recent examination late in August, and our men are still there, they haven't finished the work yet.

Q. That is, August of this year? A. August of this year, 1936, that's right.

Q. Are you familiar with the record in Application Docket 33811, which was heard in 1935, covering the joint application of York Railways Company and Edison Light & Power Company (the latter being the present respondent) for approval of the merger and consolidation of said companies into a new corporation to be known as York-Edison Company? A. Yes; I have reviewed the entire record.

Q. For what purpose? A. Well, among other things, my duties have been to watch the earnings of public service companies and it is my policy to follow all cases, such as this merger case, which might give me some indication of the property values and the earnings of the companies and, of course, when the merger case of these two companies—the York Railways Company and Edison Light & Power Company—was brought

R. A. McShea, Jr.—For Complainant—Direct

before the Commission, I was interested from the standpoint of earnings.

Q. And what evidence did you find in that record, at Application Docket 33811, relative to the value of the property of the present respondent?

Mr. LaBrum: Just a moment. I object, if your Honor please. I take it that this is a valuation case and that we are not bothering about any former or future cases, and I think, properly, he can only testify as to what he himself discovered from the books of the company and not what is contained in another record. I think it is irrelevant and immaterial.

Mr. Miller: I certainly think he can testify as to what he found in the records of the Commission submitted in an application filed by this company.

The Commissioner: It seems to me that that point is well taken. I agree that as a general thing, it is not proper to take this or that out of an old record, which might not have any particular bearing on the present case, but in this matter an inventory and appraisal were filed by this company and sworn to as being correct by representatives of the company in another proceeding. Now, if that is corrected or modified by competent evidence in this proceeding, well and good, but as far as this record is concerned, certainly an examination of that particular inventory and appraisal in the matter, it seems to me, would be proper in this proceeding, subject, of course, at all times to amendment or revision or modification as competent evidence may be developed by the company.

Mr. LaBrum: With that situation, as your Honor has stated it, we won't make an objection.

R. A. McShea, Jr.—For Complainant—Direct

By Mr. Miller:

Q. Will you answer the question? A. Attached to the application, as part of Exhibit 31—that is, Application Docket 33811—was a statement sworn to by J. E. Wayne, President of the respondent to the effect that the value of the respondent's physical property, as appraised by Day & Zimmermann, Incorporated, engineers of Philadelphia, as of June 30, 1934, amounted to \$5,324,324.

Q. How was the total estimated value of \$5,324,324 classified in Exhibit 31? A. It was classified—

Mr. LaBrum: Just a moment. If your Honor please, the record speaks for itself. Now, that he is testifying from a record, let us have the production of the record and let us see the record from which he is testifying. Apparently that is not the record (indicating). He has some papers there from which he is testifying.

Mr. Miller: Mr. Commissioner, we have here the report of Day & Zimmermann and we would be perfectly satisfied to have Mr. LaBrum check Mr. McShea's answers page by page.

Mr. LaBrum: What I am calling attention to is the fact that this is an appraisal and this is a valuation proceeding.

Mr. Miller: That is correct, but valuation proceedings usually start with appraisals, and I think it is rather strange for the respondent here to complain about their appraisal.

Mr. LaBrum: We are not complaining.

The Commissioner: That was presented in that particular proceeding as an opinion of the officers of that company, authorized to speak for it?

Mr. LaBrum: As of 1934.

The Commissioner: As of 1934, exactly.

Mr. Miller: Mr. Wayne, the president of the re-

R. A. McShea, Jr.—For Complainant—Direct

spondent, swore to the application with which this exhibit was filed and swore to the fact that it represented the value of the property for the purposes of that case.

Now, we don't agree with everything in that inventory and appraisal and I take it that the respondents do not, and we do not assert that that represents the fair value of the property.

Mr. LaBrum: Mr. Commissioner, if I may say a word. I am not quite sure of what Mr. McShea is talking about, but the question of values and the book entries, as stated in those merger proceedings and as your Honor said, a few minutes ago, have no bearing in this case.

The Commissioner: I did not say that they had no bearing in this case. I said, any reference to the figures and records in this case would seem to be entirely proper and that the company had their proper right to make any modifications, or changes, or increases, or reductions if they could produce competent evidence to that effect.

Now, if Mr. Miller wishes to offer testimony based on that appraisal as presented in the other case, I think it would be illuminating in this case. As he, himself, says it is not conclusive as to the values at the present time, but I think there are certain illuminating facts which we ought to have in this record.

If there is any objection, I will overrule it.

Mr. LaBrum: Your Honor, we have no objection. It is more or less the use of the terms. We certainly believe that is a correct appraisal.

The Commissioner: That is the appraisal presented or prepared by Day & Zimmermann.

Mr. Miller: That is correct, and when I ask Mr.

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McShea certain questions I do not want his answers to be binding upon the Commission as showing the values.

The Commissioner: 'Mr. McShea's analyses of the figures submitted to the Commission, as to what they show, is not binding upon anybody.

Mr. LaBram: May I suggest, Mr. Commissioner, that when Mr. McShea testifies he enumerate or state the pages where it appears, so that we will have a direct reference to whatever he is testifying to in the record.

By Mr. Miller:

Q. I believe the last question was: How was the total estimated value of \$5,324,324 classified in Exhibit 31? A. It was classified according to the classification of accounts prescribed by this Commission for electric companies, effective January 1, 1919.

Q. Did Exhibit 31 include the net additions made to property, subsequent to June 30, 1934? A. The cost of the net additions, as sworn to by Mr. Wayne, covering—

Q. Now, will you just answer the question: Did Exhibit 31 include the net additions made to property, subsequent to June 30, 1934? A. I think it did, but I am not exactly sure that the Exhibit 31 included both the appraisal and the additions.

By the Commissioner:

Q. When was Exhibit 31 offered? A. It was attached to and made a part of the application, as I recall.

Q. And of what date, approximately? A. That was at the time that the application was made, whenever that was.

Q. When was that, about? A. Probably late in 1934.

Q. Then, how could that exhibit show additions beyond 1934? A. It was sometime in 1935, because it was included in that application as one of the exhibits: the additions from June 30, 1934, to March 31, 1935.

R. A. McShea, Jr.—For Complainant—Direct

Q. It ran up to March 31, 1935? A. Yes, sir; so it must have been after March 31, 1935.

The Commissioner: All right.

By Mr. Miller:

Q. To clarify the matter somewhat, was Exhibit 31 the appraisal by Day & Zimmermann? A. It was not the appraisal by Day & Zimmermann. It was a duplicate copy of something prepared by somebody in the York Railways organization and attached to the application for approval of the merger and consolidation as Exhibit 31. Now, that's the way I recall it.

By the Commissioner:

Q. This volume that you have there (indicating), Exhibit No. 31 is not included in it? A. That isn't Exhibit 31 (indicating).

By Mr. Miller:

Q. However, Mr. McShea, in Exhibit 31 were or were not the additions to plant from the date of the Day & Zimmermann appraisal to March 31, 1935, included? A. Well, they were included some place in that record—I think attached to the application—but whether they were included in Exhibit 31 as something, I don't know right now, I don't recall right now.

Q. We will get that when we get the record. Do you know the figure given by Mr. Wayne in that record as to the plant valuations between June 30, 1934 and March 31, 1935? A. Those additions were shown by Mr. Wayne to amount to \$135,818.54.

Q. Did Exhibit 31 reflect the depreciation which accrued during the period from June 30, 1934 to March 31, 1935?

Mr. LaBrum: Just a minute. I hesitate to object so much, Mr. Commissioner, but there are records available, and he is testifying from a book when the records are

R. A. McShea, Jr.—For Complainant—Direct

available. I do not for a moment say that they are not correct, but we want an opportunity—

The Commissioner: You have sent up for it, haven't you?

Mr. Miller: Yes.

Mr. Keesey: What we are saying is that it seems to be an effort to bind the company in proceedings which were made not in a rate case but in a merger proceeding.

The Commissioner: The purpose of the Commission, as I understand it, up to this time and in this testimony as to this appraisal and the exhibit bearing on it, is to show the nature of the appraisal and exhibit, not taking the position that that is the final word in this proceeding. I think it is of interest to have that picture shown as part of this record but not as the conclusive picture.

Mr. Miller: We do not propose to stop as long as we have not shown what that exhibit shows, and we have no objection whatever if the company desires—

The Commissioner: Your position is not that this appraisal is a final, conclusive picture of the value of this property?

Mr. Miller: Not at all, Mr. Commissioner, but we think that it is relevant as to the value, and we think that Day & Zimmermann are a competent firm of engineers, and we also think that Mr. Wayne, when he swore to that application, probably knew what he was doing.

Now, I think if Mr. McShea answers the last question, as to whether or not Exhibit 31 reflected depreciation which accrued during the period from June 30, 1934, to March 31, 1935, that the company will find his answer is not objectionable.

Mr. LaBrum: As shown by the books, you mean, or on this exhibit?

R. A. McShea, Jr.—For Complainant—Direct

Mr. Miller: It is not shown on this exhibit. As a matter of fact, Mr. McShea is just going to state that.

Mr. LaBrum: That's all right. Go ahead.

The Witness: The appraised value as of June 30, 1934, was a depreciated value or figure. Now there was nothing in that record which brought the depreciation down to March 31, 1935.

By Mr. Miller:

Q. By what amount did the Reserve for Renewals and Replacements, as shown by the books, increase during the period from July 1, 1934, to March 31, 1935? A. The reserve amounted to \$1,854,098.26 on July 1, 1934 and on March 31, 1935, it amounted to \$1,971,296.07, an increase of \$117,197.81 during that period.

By the Commissioner:

Q. For how long? A. Nine months.

By Mr. Miller:

Q. Then, taking the Day & Zimmermann estimate as of June 30, 1934, which was submitted as described and amounted to \$5,324,324, adding the net additions at \$135,818, and subtracting the figure of \$117,198 for the increase in the renewal and replacement reserve from June 30, 1934, to March 31, 1935, what would be the resultant estimate of value, and by "value", Mr. McShea, I do not mean necessarily value for the rate case. I mean, what would be the resultant figure? A. You mean the adjusted appraised figure?

Q. That's right. A. \$5,342,944.

Mr. Miller: Now, we do not agree that that is a fair value figure at all, Mr. Commissioner. We think it is much too high and maybe the company thinks it is too low, but I will ask Mr. McShea this question:

R. A. McShea, Jr.—For Complainant—Direct

By Mr. Miller:

Q. How much, assuming only for the moment the \$5,342,944 to be the fair value as of March 31, 1935, for rate-making purposes—how much should the company have been permitted to earn per annum at six per cent? A. \$320,577.

Q. Do you know the undepreciated book value of the respondent's property on March 31, 1935? A. Well, according to Exhibit 19 of the record—

Q. Mr. McShea, we now have the famous Exhibit No. 31, and it shows additions in the period, which I have mentioned to you, at \$135,818.54. Was that the amount which you gave in your prior testimony? A. That's right; yes, sir.

Q. Now, I believe you were going to answer my question as to the undepreciated book value of the respondent's property on March 31, 1935. A. According to Exhibit 19, in Application Docket 33811, it was \$4,646,878.31.

Q. What was the amount of the Reserve for Renewals and Replacements on the same date? A. It was \$1,971,296.07.

By Mr. LaBrum:

Q. What was that figure? A. \$1,971,296.07. That's Exhibit 19. The figure I am giving now is the one shown on the books.

By Mr. Miller:

Q. That \$1,971,296.07, is that shown on Exhibit 19, or is it the actual amount in the Reserve for Renewals and Replacements, or did you obtain that directly from the books of the company? A. I believe I got that directly from the books; and my former statement that it came from Exhibit 19 was wrong.

By the Commissioner:

Q. The difference between that figure and Exhibit 19 is about \$3,000? A. I believe that's right.

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By Mr. Miller:

Q. Now, taking the one million, nine hundred thousand odd figure, which you obtained from the books, and deducting it from the four million, six hundred thousand rounded figure, which you obtained from Exhibit 19 of the record in Application 33811, what was the depreciated book value on March 31, 1935? A. \$2,675,582.

Mr. LaBrum: Just a minute. That is not the depreciated book value. That is the book value less the retirement reserve, and if you put the question that way we will have no objection to it, but as you have put the question, we think it certainly is objectionable.

The Witness: That is the undepreciated book value of the property less the reserve for renewals and replacements.

By Mr. Miller:

Q. If the book value of the property, less the Reserve for Renewals and Replacements amounted to \$2,675,582, and assuming again, only for the moment, that that was the fair value of the property, how much would the company have been permitted to earn per annum at six per cent? A. \$160,535.

Mr. LaBrum: We have no objection to this, your Honor, but we think it is all irrelevant.

By Mr. Miller:

Q. Have you made a study of the earnings of the respondent from its annual reports to the Commission; and, if so, what period did that study cover? A. I have reviewed the operating results, as reflected by the books, annual reports, and the record at Application 33811.

In the first book examination I covered the period from 1913 to 1929, inclusive. In the second book examination I

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covered the three years from 1930 to 1932, inclusive. The third book examination is now in progress.

Prior to the institution of the instant complaint, I made office studies for the three years ended December 31, 1935, from the annual reports.

Q. Now, what did those studies which you made disclose as to the operating income in the three years ended December 31, 1935 and the twelve months ended March 31, 1935? A. I don't have the figures for the twelve months ended March 31, 1935 here, but I will give them to you for the three calendar years.

Q. All right. A. In 1933 the operating revenues amounted to \$1,818,904.22. The operating expenses, including taxes and provision for renewals and replacements, amounted to \$1,124,084.67, which left an operating income of \$694,819.55.

In 1934 the revenues amounted to \$1,888,101.23. The expenses, including taxes and renewals and replacements, were \$1,164,455.36, leaving operating income of \$723,645.87.

In 1935 the operating revenues amounted to \$1,894,192.80. The expenses, including taxes and renewals and replacements, were \$1,212,341.85, leaving \$681,850.95 as operating income.

By the Commissioner:

Q. Now, Mr. McShea, as to those figures, there is no interpretation by you of those figures? Those are the figures taken from the annual reports of the company? A. That is right. No adjustments have been made of any kind.

Q. And there is no interpretation, but you have taken the figures from the books? A. That's right; that is, at this point.

Q. That is, as to those three sets of figures? A. That's right.

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By Mr. Miller:

Q. To what extent did the operating income in 1935 exceed a return of six per cent on the Day & Zimmermann appraisal adjusted to 1935? A. \$361,274.

Q. To what extent did the operating income in 1935 exceed six per cent on the book value of the property, as listed on the company's books, minus the Reserve for Renewals and Replacements? A. \$521,316.

Mr. LaBrum: Just a minute. I move that that be stricken out. That can't have any part in a valuation proceeding at all and it is drawing conclusions that might be damaging to the public relations of the company. I do not think that is fair examination. I do not want to object all the time to this type of examination, but it is irrelevant in my opinion.

Mr. Miller: I will withdraw the question.

The Commissioner: The question and the answer will be withdrawn.

Mr. Miller: That is satisfactory.

By Mr. Miller:

Q. And now, Mr. McShea, does your use of these amounts, which you stated you took from the annual reports without adjustment, mean that you consider them to represent the proper revenues or expenses and income available for return? A. No. These figures were taken from the annual reports without adjustments of any kind. They are merely given at this time in order to show that the income is considerably in excess of six per cent upon the company's own basis of valuation, as reflected by the Day & Zimmermann appraisal as of June 30, 1934, brought up to March 31, 1935, as I have indicated.

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Mr. LaBrum: I just want to say again, this is not a valuation. The use of the word "valuation" all the time is going to cause a lot of confusion.

Mr. Miller: Mr. LaBrum anticipated my next question.

Mr. LaBrum: Put it on the record to clear the situation up.

By Mr. Miller:

Q. The 1935 operating income of \$681,851, as shown by the books amounts to six per cent on what amount? A. \$11,364,200.

Mr. LaBrum: Now, I can't see the relevancy of this examination. What difference does it make what it amounts to? We are in a valuation proceeding. The effect is to draw a lot of conclusions which have no evidenciary value, and Mr. Miller knows that they have no evidenciary value, and I move that that be stricken out.

The Commissioner: Does the company deny the accuracy of the \$681,000 odd figure?

Mr. LaBrum: Of course not. It is in our annual report, but we object to these questions drawing conclusions and giving opinions in the record, which have no place in this record.

The Commissioner: I do not see where that is an opinion. If \$681,000 odd, is the correct value, then it has a relation to the rate base of so much.

Mr. Miller: The company is entitled, under the resolution of the Commission, to six per cent on its fair rate base. Now, if its earnings amount to—

Mr. LaBrum: The law is that every case must be tried in its own peculiar circumstances, and while the Commission has enunciated that policy, they have also

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followed the rule and in some of these cases have allowed in excess of six per cent.

The Commissioner: What cases?

Mr. LaBrum: I won't be positive of that, but there are one or two cases since that order where the Commission has allowed more than that, and certainly the Supreme Court of the United States have stated that you cannot lay down a definite policy for all cases.

The Commissioner: Has any case gone up to the Supreme Court of the United States where we have tried to limit a utility to a rate of return of six per cent?

Mr. LaBrum: I don't believe so, no; but you know that the rulings of the Superior Court and the Supreme Court have been to that effect, and even the recent rulings of the Superior Court have been that you must consider all the circumstances.

The Commissioner: I would be glad to have you put on the record any cases where they have allowed that amount.

Mr. LaBrum: I haven't any. If I had, I would put them on the record, but I still say that is not fair examination.

The Commissioner: So far as I know, and I think I do know, since the Commission has enunciated the policy—in 1934, I believe—that six per cent was the proper return for a utility—I know of no case in which the Commission has deviated from that policy.

On the other hand, I do know that where the Commission has asked a utility to make a reduction in its rates, and it has accepted a reduction in the rates, which did not bring the company exactly a six per cent return, they accepted that reduction in lieu of having a rate case.

Now, certainly it is common sense that if a com-

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pany will come within reasonable hailing distance of meeting the Commission's requirement of six per cent, the Commission can well afford to go along and thus avoid six or seven years of expensive litigation. I think that may have been the manner in which the Commission may have deviated from the six per cent.

Mr. LaBrum: Oh, no; I did not mean that the Commission has ever deviated. I was just trying to say that Mr. Miller is using arguments in his examination instead of getting the facts on the record.

(Discussion off the record. Objection overruled. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miller:

Q. By whom is the respondent controlled, Mr. McShea?

A. By—

Mr. LaBrum: Now, just a minute. That is a conclusion. Let us get the facts on the record.

Mr. Miller: I propose to state only facts and show facts.

Mr. LaBrum: All right, show facts. What do you mean by the word "controlled"? Just what facts do you intend to show? I call for an offer of proof on that.

The Commissioner: Can't we do it the other way around and ask the witness questions on which his answers may enable him to draw a proper conclusion, and when we get to that point we can argue as to whether he has reached the proper conclusion or not?

By Mr. Miller:

Q. By whom is all of the capital stock of the respondent owned? A. By York Railways Company.

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Mr. LaBrum: As a matter of fact, we can't see, Mr. Commissioner, what ownership has to do with the rate of return. I don't see where it is relevant at all. We haven't any objection. The facts are of record.

The Commissioner: Proceed.

By Mr. Miller:

Q. What company owns the majority of the stock of the York Railways Company?

Mr. LaBrum: Now, I object to that. That is irrelevant and immaterial.

Mr. Miller: We do not think so. We propose to show that the respondent is affiliated with various companies with which it has business dealings, and, under all the decisions, dealings of that nature with affiliates will bear very close scrutiny by the Commission to determine the reasons or the results of such dealings and we think it is perfectly proper.

Mr. LaBrum: I take it that you are finished with your valuation and that you are referring now to operating expense, is that right?

Mr. Miller: We have not attempted to put in any valuation testimony. Our testimony as to the Day & Zimmermann estimate and as to Mr. Wayne's sworn statement in the prior proceeding was only to indicate at the start of the case that in our opinion the present rates were too high.

(Objection overruled. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miller:

Q. By whom is the majority of the capital stock of the York Railways Company owned? A. By the Municipal Service Company.

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Q. And by whom is the majority of that company's stock owned?

Mr. LaBrum: Just a moment. I do not quite see the value of these questions, when all this information was brought out in the prior proceeding. We have no objection to it except that it is already in the record.—

—(Objection overruled. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miller:

Q. Will you answer the question? A. Nearly all the common stock is owned by National Public Service Corporation and pledged under one of its obligations, but the Municipal Company is under control of Associated Gas & Electric Company, which holds a majority representation on the board of directors. Associated Gas & Electric acquired control in the middle of 1934 through the purchase from Chase National Bank, New York, of almost \$4,000,000 of unsecured notes of the company payable to affiliates and pledged by them under bank loans.

Q. Is the National Public Service Corporation at the present time in existence? A. The National Public Service Corporation, on July 8, 1932, filed a voluntary petition in bankruptcy in the Federal District Court and listed assets at \$65,000,000 and liabilities at about \$38,000,000. A receiver was appointed on July 11, 1932, and a referee in bankruptcy was also appointed.

Mr. LaBrum: Just a minute. Where does all this information—

Mr. Miller: We can agree with Mr. LaBrum that this testimony is not specifically relevant to the dominant issues in this proceeding, but they do round out the picture and should be in the record for the information of the Commission.

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Mr. LaBrum: We have no objection to it except it is immaterial.

The Commissioner: I agree with you that past ownerships are not in point here. Proceed.

By Mr. Miller:

Q. Where is the respondent's office located? A. At 27 West Market Street, York, Pa.

Q. Does the respondent own the office building in which it is located? A. It does.

Q. Is the respondent the only occupant of that building? A. No.

Q. What other companies have their offices there? A. The York Railways Company, York Steam Heating Company, York Bus Company, and Glen Rock Electric Light & Power Company.

Q. Are these companies affiliated with the respondent company? A. They are. The York Railways Company, which owns all of respondent's capital stock, also owns all of the capital stock of the York Bus Company and York Steam Heating Company, and all of the voting stock of the Glen Rock Company is owned by Municipal Service Company.

Q. Do these affiliated companies share with respondent the cost of operating the office building? A. These companies share the cost of electricity, steam heat, telephone operator, and janitor service only.

Q. Do these companies pay the respondent rent for the use of the offices? A. No; they share all of the expenses that I have enumerated and pay nothing additional as rental.

Q. Do you know the value of the general office land and building at 27 West Market Street, York?

Mr. LaBrum: Just a minute. I object. Let us qualify him before he gets into the value of properties.

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A. According to an appraisal by Day & Zimmermann in 1934, the land was placed in there at a reproduction cost of \$89,000 and the building at a reproduction cost, less depreciation, of about \$75,000, and because all of the general buildings were depreciated in about that ratio—about twenty-five per cent—I applied that to this specific building—or a total depreciated reproduction cost of about \$164,000. Now, that I believe is different overheads and the intangibles.

By Mr. Miller:

Q. Did you investigate the respondent's corporate history?

A. I did.

Q. From what sources did you derive your information as to that? A. Well, at various times, from 1914, when the Commission was organized, down to the merger case of 1935, applications have been made by this company in connection with perhaps some of its affiliates for various purposes.

There was a merger in 1915—I think the application number was 2091; I am not sure—which involved the organization of the present Edison Light & Power Company and the Merchants Electric Light, Heat & Power Company and some other operating companies. Now, in that record were contained a great many papers relating to the set-up of the present Edison Light & Power Company or the companies that now make up the present Edison Light & Power Company.

Mr. Miller: Mr. Commissioner, I shall next ask Mr. McShea to state, briefly, what is the respondent's corporate history. It is a little bit dry, but I think it will give the picture to the Commission a little bit better.

By Mr. Miller:

Q. Will you relate, briefly, the corporate history of the respondent? A. The present Edison Light & Power Company, respondent, received letters patent on July 15, 1915. It was

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formed by merger and consolidation of the first Edison Light & Power Company—

By the Commissioner:

Q. You mean the first Edison Light & Power Company at York, Pennsylvania? A. Yes, sir. There was one company that received letters patent in 1913, known as the Edison Light & Power Company. In 1915, that Edison Light & Power Company was merged with the Merchants and some others.

Q. When you say the "first Edison Light & Power Company" you mean the first in York and vicinity? A. That's right—Merchants Electric Light, Heat & Power Company and five non-Operating companies by virtue of an agreement of merger and consolidation dated June 26, 1915. The first Edison, Light & Power Company received letters patent on May 29, 1913, and was formed by virtue of an agreement of merger and consolidation dated May 8, 1913, between York & Windsor Electric Light Company, Edison Electric Light Company and fourteen non-operating companies.

Edison Electric Light Company received letters patent on April 13, 1885, and the York & Windsor Company received its letters patent on April 1, 1905. The Merchants Electric Light, Heat & Power Company received letters patent on December 14, 1900.

The York & Windsor Electric Light Company was formed by merger and consolidation under agreement dated March 15, 1905, between Red Lion Electric Company and three non-operating companies. The Red Lion Company received letters patent on May 19, 1890.

In 1894, the Edison Electric Light Company acquired the properties and franchise of the Peoples Electric Light Company of York which received letters patent January 9, 1891, and in 1908 it acquired the properties and franchises of The Westinghouse Electric Light, Heat & Power Company of York, Pa., which received letters patent on October 14, 1892. The

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present Edison Light & Power Company, respondent, purchased franchises and properties of seven non-operating companies from 1922 to 1928.

During the period from July 1, 1899 to December 31, 1901, all of the properties and assets of the Edison Electric Light Company and Westinghouse Electric Light, Heat & Power Company were reflected on the books of York Light, Heat & Power Company and the operations were conducted, as far as I have been able to determine, in the name of York Light, Heat & Power Company. On December 31, 1901 these assets were transferred back from the York Light, Heat & Power Company books to the Edison & Westinghouse books.

From 1885 to date, electric service has been rendered by respondent and its predecessors, as follows:

Edison Electric Light Company, from April 13, 1885 to May 29, 1913.

Now, in each of these cases I have given the date of the letters patent. When they actually begun operations I don't have that date.

Peoples Electric Light Company of York, from January 9, 1891 to February 8, 1894;

The Westinghouse Electric Light, Heat & Power Company of York, Pa., from October 14, 1892 to September 28, 1908;

Red Lion Electric Light Company, from May 19, 1890, to April 1, 1905;

York & Windsor Electric Light Company, from April 1, 1905 to May 29, 1913;

Edison Light & Power Company—first, from May 29, 1913 to July 15, 1915;

Merchants Electric Light, Heat & Power Company, from December 14, 1900 to July 15, 1915;

Edison Light & Power Company—the respondent, from July 15, 1915 to present;

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York Light, Heat & Power Company, from July 1, 1899 to December 31, 1901.

Now, insofar as the York Light, Heat & Power Company are concerned, I don't know the date on which they were organized or incorporated, the purposes for which they were incorporated, and whether this period from July 1, 1899 to December 31, 1901 is the only period during which they operated.

By Mr. Miller:

Q. Does the respondent company have the exclusive right to render electric service in the City of York and the territory adjacent thereto? A. No. In the City of York and the entire townships of West Manchester and Spring Garden, and portions of the Township of Manchester, East Manchester and Jackson, the Metropolitan Edison Company also has the right to render electric service.

Q. Is there active competition between the Metropolitan Edison Company and the respondent company? A. I don't believe there is any active competition, by reason of the fact that both companies have had an arrangement for many years regarding a division of the business and territory.

Q. Do you know whether that arrangement has been reduced to writing? A. It has, in the form of an agreement dated January 1, 1935.

The Commissioner: Dated when?

The Witness: January 1, 1935.

(Booklet entitled "Agreement between Metropolitan Edison Company and Edison Light and Power Company covering Division of Business and Territory", dated January 1, 1935, marked Commission's Exhibit No. 1.).

By Mr. Miller:

Q. I show you booklet, marked Commission's Exhibit No. 1, and ask you if that is a copy of the agreement you have men-

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tioned, dated January 1, 1935? A. It is.

Q. Is that the only agreement under which this competitive system or possible competitive system has been worked out?

A. Well, I don't know of any others. It is the current one.

Q. At any rate, it is the agreement dated January 1, 1935?

A. That's right.

Q. Does the agreement, identified as Commission's Exhibit No. 1, clearly indicate the exclusive territory of the respondent, as distinguished from the joint territory? A. Yes. A map of York County is attached to the agreement.

The Commissioner: What is the purpose of this examination?

Mr. Miller: Simply, Mr. Commissioner, to show the territory of the company in York County. This is the map that we have to show that (indicating).

The Commissioner: As far as the so-called retail service is concerned, the company has no competition, has it?

Mr. Miller: No, sir.

The Witness: In the division of the business, as described in the contract, as I understand, all the power business over 100 horsepower is taken care of by the Metropolitan Edison Company and the residential and the commercial business and the small power business is taken care of by the Edison Light & Power Company.

By the Commissioner:

Q. Put it this way: In the classes of consumers which they each serve, there is no competition? A. That's about right; yes.

(Paper entitled "Edison Light and Power Company Net Fixed Capital Additions for the Period from July 1, 1934 to June 30, 1936" marked Commission's Exhibit No. 2.)

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By Mr. Miller:

Q. Have you prepared a statement of the net additions to the fixed capital, as shown by the books of the company, from July 1, 1934 to June 30, 1936? A. I have.

Q. I show you a paper, marked Commission's Exhibit No. 2, and ask you if that is the statement to which you refer? A. It is.

(Paper entitled "Statement of Construction Work in Progress as of June 30, 1936" marked Commission's Exhibit No. 3.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 3 and ask you if that is the statement of construction work in progress as of June 30, 1936? A. It is.

Q. As prepared by you? A. Yes, sir.

(Paper entitled "'Analysis of Account 183. Reserve for Renewals and Replacements' For the Period From July 1, 1934, To June 30, 1936" marked Commission's Exhibit No. 4.)

By Mr. Miller:

Q. Have you prepared an analysis of the Reserve for Renewals and Replacements, as shown by the Company's books, for the period from July 1, 1934 to June 30, 1936? A. I have.

Q. I show you a sheet marked Commission's Exhibit No. 4, and ask you if that is the analysis referred to. A. It is.

(Twelve sheets, the first one being entitled "Statement of Operating Revenues and Kilowatt Hours Sold for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 5.)

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By Mr. Miller:

Q. Now, with reference to revenues, have you prepared schedules of the operating revenues of the respondent? A. I have.

Q. I show you several papers, twelve in all, marked Commission's Exhibit No. 5, and ask you if that is the statement referred to. A. It is.

Q. Now, what periods are covered by these papers identified as Commission's Exhibit No. 5? A. Sheet No. 1 of Exhibit No. 5 is the summary of the operating revenues in dollars and the kilowatt hours sold for the period from January 1, 1931 to June 30, 1936.

Now, for purposes of comparison, I have included the first six months of 1935 also.

By the Commissioner:

Q. The first six months of 1936, you mean? A. Well, also 1935. They are both there.

The Commissioner: Oh, yes; I see.

By Mr. Miller:

Q. Now, on Sheet No. 1, that summary covers five and a half years, does it not? A. That's right, Sheets Nos. 2 to 12 are details and cover the two and one-half years ended June 30, 1936.

Q. Will you explain Exhibit No. 5 in general, Mr. McShea? A. Well, the summary is just merely a summary by company accounts of the revenues received according to the classification made by the company.

Q. And that is shown on Sheet No. 1? A. That is on the upper portion of Sheet No. 1.

Now, you will note that in 1934, Accounts 307, 310 and 314 were dropped and never appeared thereafter for those ac-

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counts. Likewise, for the years 1931, 1932 and 1933, nothing was shown for Domestic Power Account 304, but in 1934 and '5 and '6, those spaces are filled in with revenues from that source.

Q. Why is that? A. That was caused by reclassifying certain operating revenue accounts or reclassifying the revenues of the company.

Q. Were any rate reductions made by respondent company during the five and one-half years ended June 30, 1936? A. Yes. There were several reductions. On September 1, 1933, a reduction of the retail and wholesale power rates was made, calculated by respondent to reduce revenues in the amount of \$32,300 per year.

On February 7, 1935, a reduction of the residential and commercial rates was made, calculated by respondent to reduce revenues in the amount of \$130,700 per year.

On September 1, 1935, the high tension power interchange rates were reduced and calculated by respondent to reduce annual revenues in the amount of \$15,000 per year.

These three reductions aggregated \$178,000 per annum.

Q. Have these reductions actually caused decreases in the annual revenues, as shown on Exhibit No. 5? (No answer.)

The Commissioner: You say, if these reductions in rates caused reductions in the revenues. I take it what you are trying to show, if the reductions as actually made in the rate schedules did not produce in the net result to the company a reduction in the revenues—or perhaps it did, but you are not assuming that that is the only factor involved as to the present position of the company, after those reductions were made?

Mr. Miller: Not at all. We will develop that, Mr. Commissioner.

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By Mr. Miller:

Q. Mr. McShea, what was the situation after the 1933 reduction, which the respondent calculated would reduce revenues in the amount of \$32,300 per annum?

Mr. LaBrum: I think that you ought to say what class these reductions affected, whether commercial, residential, or power.

The Commissioner: I think he described that before.

Mr. Miller: That was stated, Mr. LaBrum. He has stated that the September first reduction was a reduction of the retail and wholesale power rates—is that what you mean?

Mr. LaBrum: Yes.

Mr. Miller: That was included in his answer.

By Mr. Miller:

Q. Now, Mr. McShea, did the 1933 revenues show a reduction in amount as compared with the 1934 revenues? A. It did not.

Q. Did they show an increase? A. They did.

Q. What was the amount of that increase? A. Taking the total operating revenues, the increase was from \$1,818,904, in 1933 to \$1,888,101, in 1934 or \$69,197.

By the Commissioner:

Q. That is not based on the same amount of current that was consumed in the previous year? In other words, there is a pick-up in the amount of current sold by the company? A. That's right.

Mr. Miller: Mr. Commissioner, we are just going into that.

The Commissioner: All right.

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By Mr. Miller:

Q. In 1935, did the revenues increase over 1934, in spite of the February 7th reduction amounting to \$130,700, as estimated by the company? Did the revenues show a decrease of that amount? A. In 1935, the revenues showed an increase of \$6,092 over 1934.

By the Commissioner:

Q. A reduction of how much? A. \$130,700 on February 7, 1935.

By Mr. Miller:

Q. Now, on September 1, 1935, you testified, Mr. McShea, that the high tension power interchange rates of the company were reduced, with the thought that the annual revenues would be reduced in the amount of \$15,000. Is the experience of the company in 1935 in accordance with that estimate? A. That reduction, which was made on September 1, 1935, resulted in four months of that amount being reflected in the 1935 figures.

Well, considering the overall picture, all I can say is that the 1935 revenues exceeded the 1934 revenues by \$6,092.

Q. Taking the first six months of 1936, have the revenues of the company been reduced in comparison with the first six months of 1935? A. There has been an actual increase in the first six months of 1936 over 1935, in the amount of \$36,259.

Q. Now, along the line of Commissioner Stahlnecker's inquiry: Do you mean to state that the respondent miscalculated the effect of these rate reductions? A. No; I don't.

Q. Will you explain that? A. If you will refer to the lower half of Sheet No. 1, you will see that there has been an upward trend in the annual consumption—

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By the Commissioner:

Q. That is, an upward trend after 1933? A. Yes, sir; an upward trend after 1933. Now, there was an increase in the total consumption of \$49,682,041 in 1933—

By Mr. Miller:

Q. That is kilowatt hours, I assume? A. That's right—to 58,217,779 in 1935—that is skipping 1934—an increase of 8,535,738, or about seventeen per cent.

In the first six months of 1936, the total consumption was 29,988,688 kilowatt hours, an increase of about twelve per cent over the first six months of 1935.

Q. Do the respondent's records indicate the reason for this increased consumption and have you determined the reason for this increased consumption from the records? A. They don't, exactly give the reason for the increased consumption, but they do state what the increased consumption—or how it was applied among the various rate schedules.

Q. In other words, the increase in each class of consumers? A. That's right. There may be cases where there was an actual decrease, but in the aggregate there was a substantial increase.

Q. Will you state what the books of the respondent show in that connection? A. On Sheets 2 to 9, inclusive, of Exhibit 5, the revenues, number of customers, kilowatt hours sold, average consumption per customer and average revenue per kilowatt hour have been segregated according to individual tariff schedules for the period from January 1, 1934 to June 30, 1936.

At the top of Sheet 2, lines 1 to 13, are reflected these statistics for Schedule RL of P. S. C. Pa. Tariff No. 8, covering residential lighting service—covering domestic service. There has been a rather steady increase of consumption per customer

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during the entire period of two and one-half years. The average consumption as shown for January, 1934, was 58.56 kilowatt hours per customer, and in January, 1936, it was 68.66 kilowatt hours per customer, or an increase of 10.10 kilowatt hours, or seventeen per cent.

Q. Take the first six months of 1934 and 1936. A. In June, 1934, the average consumption was 49.49 kilowatt hours, and in June, 1936, it was 52.02 kilowatt hours, an increase of 2.53 kilowatt hours, or about five per cent.

Q. Now, do you have data on the remaining tariff schedules? A. Yes, sir; all the data on the remaining tariff schedules are shown on pages 2 to 9.

Q. And, in general, the comments you have made as to tariff schedule RL would be applicable to those? A. Well, not exactly, but in some cases. For instance, the tariff schedule shows on lines 14 to 26, of Sheet No. 2, that there actually has been a decrease in consumption per month.

Q. That is the City Lighting Service? A. That is the City Lighting Service.

By the Commissioner:

Q. Well, that may be due to a number of reasons. There may have been a reduction in the number of lights? A. That's right.

Q. Or in the number of hours used? A. Yes; but in that connection these sheets will speak for themselves insofar as the tariff schedules are concerned.

By Mr. Miller:

Q. Do the revenues shown by Sheets 2 to 9 agree with the total revenues shown by Sheet 1? A. Yes. On Sheet 9 is shown the grand total for the years '34, '35 and the first six months of 1936. That agrees with the summary on Sheet 1.

Q. Now, with reference to Sheets 10, 11 and 12, what do those sheets show? A. These sheets, 10, 11 and 12, show the

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distribution of the various tariff schedules to the accounts, revenue accounts.

Q. And Sheet 10 shows the year ended December 31, 1934; Sheet 11, December 31, 1935 and Sheet 12 of the first six months of 1936, is that correct? A. That's correct.

Q. Have you made an analysis of the cost of production and purchase of electricity by the respondent, as shown on the books and by the records of the company? A. I have.

Q. For what period? A. From January 1, 1931 to June 30, 1936.

Q. Have you reduced that analysis to exhibit form? A. I have.

(Document, consisting of 29 sheets, entitled "Operating Expenses—Accounts 350 to 373, Incl. Generating by Steam Power for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 6.)

By Mr. Miller:

Q. I show you 29 sheets of paper collectively marked Commission's Exhibit No. 6, and ask you if that is the exhibit to which you refer. A. It is.

Q. Will you explain Sheet No. 1 of Exhibit 6? A. Sheet No. 1 of Exhibit 6 is a summary of the cost as shown by the books in Accounts Nos. 350 to 373, inclusive, of generating electricity and steam at respondent's Pershing Avenue power plant, during the five and one-half years ending June 30, 1936. For comparative purposes, the costs for the first six months of 1935 are also shown.

By the Commissioner:

Q. What are those first two items: "Superintendence" and "Superintendence, Altoona"? What do those mean? A. At one time this company, the respondent, was associated in some way with the Penn Central Light & Power Company at

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Altoona, and Altoona, in effect, I believe supervised the operations at York and renders an invoice every month, and the amounts shown by the invoices were distributed to the various departments. It has stopped. As a matter of fact, the last charge was in August, 1933.

By Mr. Miller:

Q. Did you find any vouchers supporting these invoices, any details? A. Well, we didn't go into that because the charges are no longer being made.

Q. Then, I take it that Sheet 1 is a summary of the production costs. Have you prepared a detailed statement of each account which is listed on Sheet 1? A. I have.

Q. Are they the remaining sheets of Exhibit No. 6? A. They are the remaining sheets of Exhibit No. 6. In addition to the dollar figures shown for the various accounts, I have included certain statistical information with respect to the quantities of steam and electricity produced and perhaps a few other things.

By the Commissioner:

Q. Mr. McShea, just go back. On this first page, apparently for some reason, there are a number of items under the "Maintenance" schedule there, which seem to rise almost vertically in 1933 and then drop back again sharply. You drop down at "Exciting Apparatus", whatever "Exciting Apparatus" is. There you have, in '31, \$464; 1932, \$403; 1933, \$5,019. What is the explanation of that, do you know? You see what I mean? A. Yes.

Q. There is apparently almost a vertical rise there for some reason. A. I may have the reason among my papers, if you want me to look it up.

Q. I was just curious about such an astonishing shift. It really is not important. (No answer.)

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By Mr. Miller:

Q. Now, on Sheet 2, what information is shown? A. On Sheet No. 2 is a monthly comparative statement of the kilowatt hours generated and the steam produced from January 1, 1931 to June 30, 1936. You will note that there is very little production of electricity or steam in the summer months, or from May to September in each one of the years.

Q. Is there anything particularly notable on Sheet No. 3? A. Well, Sheet No. 3 covers the cost of superintendence as ultimately charged in Account 350. Now, that's the three Edison accounts, the first one having the general designation of "Superintendence", the second being designated "Superintendence, Altoona," and the third for 1936 only being called "Water Analysis Labor." The only thing I want to say is that the Altoona charges were discontinued in August, 1933.

Q. Now, Sheets 4 and 5 show what, briefly? A. That gives the labor cost of operating the power plant. Q. Do you desire to make any other explanation of the labor charges shown on Sheets 3, 4 and 5? A. No.

Q. Sheet No. 6, what does that show? A. That is a statement of the cost and consumption of fuel, consisting of bituminous and anthracite coal. Line 13 shows the amounts annually charged to Account 355, Fuel. Line 26 shows the annual consumption of bituminous coal, and line 29 shows the annual consumption of anthracite coal. The average costs per ton, including only the coal and freight are shown on line 27 for bituminous coal and on line 30 for anthracite coal.

Q. What was that cost for bituminous coal in the first six months of 1936? A. You mean the average cost?

Q. The average cost? A. \$4.89. Now, the cost of handling, as shown on line 34 includes mainly the wages paid to the operator of the coal crane.

Q. Now, what is covered by Sheet 7? Is it self-explanatory? A. Well, it represents the cost of ashes.

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By the Commissioner:

Q. You mean the sale of ashes? A. Well, it is indicated as the sale of ashes, but when ashes are sold, there will be credits appearing in this account and they will be offset by the cost of the ashes. There are, apparently, certain handling costs which are charged in these debits.

Q. Didn't they have any ashes before 1935? A. There was a reclassification of their accounts beginning in 1936.

Q. It was put somewhere else? A. That's right. The cost is there.

Q. The cost is there? A. Yes; it is somewhere else.

Q. How about the remaining portion of the exhibit, production system, operating costs reflected in Sheets 8 to 12—can you just summarize those? (No answer.)

A recess was here taken until 2:00 o'clock p. m.

Harrisburg, Pa. Wednesday, October 28, 1936.

2:00 o'clock p. m.

Present: Parties as before noted.

R. A. McSHEA, JR. resumed.

Mr. Miller: Will you read the last question?

(Last question read.)

The Witness: Sheet No. 8 shows the cost of various kinds of lubricants.

Sheet No. 9 covers the costs charged to P.S.C. accounts 360 and 361 in 1936 for boiler plant supplies and expenses. Prior to 1936, these charges were included in

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Accounts 358 and 362, 358 being "Water" and 362 being "Other Power Plant Supplies."

Sheet No. 10 reflects the cost of "Other Power Plant Supplies" as charged in Account 362.

Sheet No. 11 is the cost of "Other Power Plant Expenses."

Sheet No. 12 represents the "Miscellaneous Expenses of the Superintendent and Other Employees" for the first six months of 1936.

In the lower part of Sheet 12 are credits made to Edison Account No. 600.12 represented credits taken by Edison Company for steam delivered to the York Steam Heating Company. Prior to 1936, these credits were reflected elsewhere, and they appear for the first time in this account in 1936.

Q. Going back for the moment to Sheet 10, why are there no figures in the 1936 column, in the upper part of the exhibit? A. Well, 1936, the company installed a new or a different system of accounts, different from the one that had been in force there for many years.

Q. And their new account is numbered 600.10, and shows in the lower part of that exhibit, is that right? A. No. 600.10 is the present account, which they consider is synonymous with Account No. 362 "Other Power Plant Supplies." Now, I don't mean by that that this \$175 figure for 1936 is comparable with the figures that appear for the years 1931 to 1935, because various types of expenditures have been charged differently in 1936 than they were in the years prior to 1936.

Q. Well, as I understand it, these figures, which are taken from the books, in your opinion, regardless of the accounting system of the company, reflect the amounts applicable to these items for the months indicated? A. Well, this doesn't reflect my opinion at all. This statement shows the amounts actually

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assigned to Account 362 "Other Power Plant Supplies" by the company during this period.

Q. All right, proceed. A. I am finished with that.

Q. What was the last sheet that you described? A. No. 12 was the last.

Q. And what is covered by Sheets 13 to 19, inclusive? A. These sheets all reflect the amounts charged to the various production system maintenance accounts, during the five and one-half year period. The account captions are self-explanatory—at least, to a large extent.

Q. Have you made a study of the payments made by the respondent for power purchased and the bases upon which the payments were computed. A. I have.

Q. And does that appear on Sheet No. 20? A. Sheet No. 20 of Exhibit 6 is the summary of the cost of all power purchased from January 1, 1931 to June 30, 1936. During this period power was purchased from two sources, namely, the Pennsylvania Water & Power Company and the Metropolitan Edison Company. Prior to January 1, 1935, it was purchased under separate contracts from these two companies. Details of the energy purchased from Metropolitan Edison Company are shown on Sheet 21 and from Pennsylvania Water & Power Company on Sheet 22 for the period from January 1, 1931 to December 31, 1934. These sheets show the monthly amounts paid, the monthly kilowatt hours purchased, and in the case of the Pennsylvania Water & Power Company the monthly kilowatt demands as billed.

Q. Under what arrangements have the general power requirements been purchased since January 1, 1935? A. Power has been purchased since January 1, 1935, under the provisions of a four-party contract dated January 1, 1935. The parties to this contract are Edison Light & Power Company, the respondent, Metropolitan Edison Company, Pennsylvania Water & Power Company, and Safe Harbor Water Power Corporation.

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The contract is to be effective for a minimum period of ten years from March 31, 1935.

Details of the amounts paid by respondent under this contract are shown by Sheet 23, which shows the application of the rates specified in the contract, and the division of the amounts paid thereunder, between Pennsylvania Water & Power Company and Metropolitan Edison Company.

Q. Are there any other contracts for the purchase of power that you know of? A. Yes. Respondent has a contract dated January 1, 1935, with Metropolitan Edison Company for the purchase of power to be delivered by Metropolitan Edison direct to the P. H. Gladfelter paper mills located in the borough of Spring Grove, York County, a large power consumer of respondent. Details of the amounts paid under this contract from January 1, 1935 to June 30, 1936, are shown by Sheet No. 24.

Q. What was the average cost per kilowatt hour of power purchased in 1935 from these various sources? A. Under the four-party contract of January 1, 1935, there were 62,902,300 kilowatt hours received at a total cost of \$506,852.28, or an average price of 8.06 mills per kilowatt hour. In the six months ended June 30, 1936, under the same contract, respondent purchased 32,293,000 kilowatt hours at a total cost of \$252,832 or the average rate of 7.83 mills per kilowatt hour.

Now, the total kilowatt hours purchased in 1935 from all sources, including the Gladfelter contract—the four-party contract—was 67,202,521 kilowatt hours at a total cost of \$549,065.99, or 8.17 mills per kilowatt hour.

In the first six months, there were a total of 33,656,489 kilowatt hours purchased at a total cost of \$262,665.51, or an average of 7.8 mills per kilowatt hour.

Q. Have you prepared copies of these power contracts? A. The Accounting Bureau has prepared copies.

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(Paper consisting of nine sheets, entitled "Wholesale Agreement Edison Light & Power Company, Metropolitan Edison Company, Pennsylvania Water & Power Company and Safe Harbor Water Power Corporation" dated January 1, 1935, marked Commission's Exhibit No. 7.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 7, purporting to be a copy of contract dated January 1, 1935, entitled "Wholesale Agreement, Edison Light and Power Company, Metropolitan Edison Company, Pennsylvania Water and Power Company and Safe Harbor Water Power Corporation," and ask you who prepared that copy? A. The Accounting Bureau of the Commission.

Q. Is it a correct copy, to your knowledge? A. As far as I know. It was done by our typewriting department.

Mr. Miller: I might state, Mr. Commissioner, that so far as the copies of these contracts being placed in evidence is concerned, we realize that they are not the best evidence. We are merely putting them in to get the picture in an orderly fashion, and, of course, they are subject to check by the respondent company or anyone else.

The Commissioner: I take it that there is no objection to that? (No answer.)

(Paper consisting of five sheets, entitled "Wholesale Agreement Metropolitan Edison Company and Edison Light & Power Company" marked Commission's Exhibit No. 8.)

By Mr. Miller:

Q. I show you a paper marked Commission's Exhibit No. 8 and ask you what that purports to be? A. This is a copy

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of the contract between Metropolitan Edison Company and Edison Light & Power Company, dated January 1, 1935, with relation to the source of power for the Gladfelter Paper mills.

Q. A wholesale agreement? A. That's right.

Q. Who prepared that copy? A. That was also prepared by the Bureau of Accounts.

Q. Was it prepared from the original? A. It was prepared from the original file copy.

Q. From the copy on file with the Commission? A. Yes. As a matter of fact, I believe both copies are on file with the Commission.

Q. You have testified to the cost of production of electricity and steam and the purchase of electricity. Were the entire costs of that production and purchase borne by the respondent company? A. No; they were not.

Q. Will you explain that? A. That power plant is used mainly for the production of steam during the heating season, the generation of electricity being incidental. However, as the power plant is owned and operated by respondent, all production system operating costs are paid by it. The steam produced is delivered to York Steam Heating Company, which pays for it upon the basis of a price per thousand pounds condensation. From January 1, 1931 to August, 1934, inclusive, the rate per thousand pounds was 40 cents. From September, 1934, to June 30, 1936, the price was 42½ cents.

Q. How was the price of 42½ cents determined, if you know? A. Well, this price was discussed by the directors of the company at a meeting held on December 27, 1934. The minutes covering the decision or the action taken, I will quote as follows—

Q. Did you examine the minutes themselves? A. I examined the minutes themselves.

“The President stated a study of the cost to the Edison Company of producing steam based on operating and maintenance charges for the first ten months of 1934 resulted in

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its being determined that the cost was forty cents (\$.40)* per thousand pounds produced.

"Following consideration, it was resolved, on motion duly made, seconded and carried, that the charge for steam for the current year beginning September 1, 1934, to the York Steam Heating, be increased from forty (40) to 42½ cents per thousand pounds."

Q. It was not determined by resolution to be forty cents?

A. It was not.

Q. But it appears that the cost was forty cents? A. That's right—the cost of operation and maintenance.

Q. And they decided to sell it at forty-two and a half cents? A. That's right.

By the Commissioner:

Q. Do you know how the cost of forty-cent steam was determined? A. The officials of the company didn't tell us how it was determined.

(Discussion off the record.)

By Mr. Miller:

Q. Does the forty cent figure, Mr. McShea, include any charges for return on the investment, or depreciation, or taxes? A. No; I don't think it does, for the reason that the President, in the minutes just quoted, said that the cost of forty cents represented the operation and maintenance.

Q. Now, if your interpretation is correct, what does the failure to provide for these items mean? A. Well, it means to me that respondent is not receiving an adequate price for the delivery of steam to the York Steam Heating Company.

Q. Have you prepared a schedule showing the extent of the charges to the York Steam Heating Company for steam delivered by respondent? A. Yes. Sheet 26 of Exhibit 6 shows the credits taken by Edison Light & Power Company for steam

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delivered to the York Steam Heating Company and credited to the account entitled "Duplicate Production Expense Transferred" for the period from January 1, 1931, to June 30, 1936. Now, in the upper portion of Sheet 26, no amounts are shown for the year 1936. That, owing to the reclassification, owing to a change in the reclassification of the accounts, this item is now being credited to Account 364.

Q. You mean, a reclassification of the accounts by the Commission or by the company? A. By the company. The company now credits these amounts, the former amounts, to Account 364 and not to the account reflected on page 26.

Q. Account 364 appears on Sheet 1? A. It appears on Sheet 1 and I think it is also on Sheet 12—also on Sheet 12.

Q. That would be the monthly details on Sheet No. 12? A. That's right.

Q. Do other items appear on respondent's books as credits to the cost of production and purchase of electricity? A. Yes. All of the energy requirements of York Railways Company are supplied by respondent. The energy is first purchased by respondent and charged to Account 413, "Electricity Purchased", the cost being reflected on Sheet 20 of Exhibit No. 6.

Q. How is the York Railways Company charged? A. Well, as energy is delivered to York Railways Company, that company is charged and the account entitled "Duplicate Production Expense Transferred" is credited.

In other words, the amounts received from the York Railways Company and also from the York Steam Heating Company up to the end of 1935, were credited to this account. Beginning in 1936, the credit for steam was made to Account 364 and the credit for electricity was allowed to remain in the "Duplicate Production Expense" account.

Q. Have you prepared a schedule of the amounts charged to York Railways during the period from January, 1931 to June, 1936, as shown by the respondent's books? A. I have. These charges are reflected by Sheet 27 of Exhibit No. 6.

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Q. And what rate did the respondent charge the York Railways for this energy during that period? (No answer.)

By the Commissioner:

Q. The amount of kilowatt hours is shown on the next sheet? A. The dollars are shown on Sheet 27 and the kilowatt hours are shown on Sheet 28.

In answer to your question, Mr. Miller, the York Railways Company was charged nine mills per kilowatt hour.

By Mr. Miller:

Q. What is covered by Sheet No. 27 in addition to that credit for electricity delivered to York Railways by Power Company? A. Sheet No. 27, showing the dollar amounts, and Sheet 28, showing the kilowatt hours have been broken down in three ways: the first section on Sheet 27, lines 1 to 13, shows the dollars received from the York Railways Company for power. The second section, lines 14 to 26, shows the amounts received from the York Railways Company for light; and the third section represents the amount of dollars, representing electricity used by respondent in its own operations. That's on line 27.

By the Commissioner:

Q. You add the three together to get the grand total? A. Adding the three together, we get the total for each period of the credits to "Duplicate Production Expense Transferred for Electricity."

By Mr. Miller:

Q. In your opinion, has the respondent properly credited to operating expenses the amounts received from York Railways Company for electric energy? A. I believe the amounts received from York Railways Company for electric energy

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should be credited to an operating revenue account: 308, Metered Sales to Affiliated Railway Utilities.

Q. Is that a Public Service Commission account number or a company account number? A. The Public Service Commission. Now, I say that for the reason, partly for the reason, that the electric company, the Edison Light & Power Company has a tariff on file providing for the sale of electricity to the York Railways Company, and a rate of nine mills is specified in that tariff. In other words, the revenue account—

By the Commissioner:

Q. So I can understand that, under these contracts, under which this company buys most of the power which it gets, the large bulk of the power which it gets at wholesale from other companies, what is the rate per kilowatt hour which it pays? A. In 1936 so far I believe the overall cost was 7.8 mills.

Q. And it sells a large part of that to the York Railways at nine mills? A. Well, it is a substantial part of it. It is not a large part when you consider the total operation.

Q. But they sell a part of it to the York Railways Company at nine mills, is that right? A. That's right.

By Mr. Miller:

Q. Have you summarized the various sheets of Exhibit No. 6 to show the total cost of generating and purchasing energy during the period covered by the exhibit? A. Yes; I have. Sheet No. 29 summarizes the cost of production and generation of electricity as reflected by respondent's books for the five and one-half years ended June 30, 1936. On this statement I have also included the first six months of 1935. It also shows the total kilowatt hour requirements and the extent of purchase and generating electricity in meeting these requirements.

Q. That will cover the production. Have you prepared a statement of the transmission system expenses? A. I have.

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(Paper entitled "Transmission System Expenses for the Six Months Ended June 30, 1936" marked Commission's Exhibit No. 9.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 9, consisting of one sheet, and ask you if that is the statement referred to. A. It is.

Q. Why does not Exhibit 9 cover the period from 1931 to 1935, inclusive? I note that it says "Transmission System Expenses for the Six Months Ended June 30, 1936." A. Prior to 1936, these expenses were charged in the distribution department expenses.

Q. Have you prepared a statement of the distribution system expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper entitled "Distribution System Expenses for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 10.)

By Mr. Miller:

Q. I show you paper marked Commission's Exhibit No. 10 and ask you if that is the statement to which you refer? A. It is.

Q. Then, this statement is a summary of the distribution system expenses as shown by the books? A. That's right.

Q. Regardless of the account? A. Yes; for each of the accounts for the years shown on this summary.

Q. The account numbers appear at the left of the exhibit? A. That's right.

Q. Have you prepared detailed statements showing the monthly expenses for each Public Service Commission account indicated in Column "c" of Exhibit No. 10? A. I have pre-

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pared detailed statements, but they have not been completed yet—I mean they are in course of preparation.

Q. Do you desire to explain at this time, prior to the submission of the detailed statements, any of the items shown by Exhibit No. 10? A. The only item I wish to comment upon at this time is the one appearing on line 2 opposite Edison Account 331-A—that should be 331.1-A—“Superintendence—Altoona.” Now, that is the same kind of charge that appeared on the production system of account and disappeared after August 31, 1933.

Q. What comment have you to make on that item as to a provision therefor in the future? A. Of course, since the expense is no longer being incurred, no provision should be made for this allowance in computing the revenues to which the company is entitled.

Q. Have you any comment on the remaining items? A. Not at this time.

Q. Have you prepared a statement of Utilization System Expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper entitled “Utilization System Expenses for the Period from January 1, 1931 to June 30, 1936” marked Commission’s Exhibit No. 11.)

By Mr. Miller:

Q. Is Exhibit No. 11 a summary of the utilization system expenses, as shown by the books of the respondent? A. It is.

Q. Do you desire to comment on the utilization system expenses at this time? A. No; not at this time, for the reason that our detailed analysis has not yet been completed.

Q. Have you prepared a statement of the Commercial Department Expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

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(Paper entitled "Commercial Department Expenses for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 12.)

By Mr. Miller:

Q. I show you paper marked Commission's Exhibit No. 12 and ask you if that is the statement you referred to? A. It is.

Q. What is the nature of that statement? A. It is a summary of the Commercial Department Expenses for the period from January 1, 1931 to June 30, 1936, as shown by the books.

Q. Do you have any comment to make at this time upon the various items shown in Exhibit No. 12? A. Not now; no, sir.

Q. Have you prepared a statement of New Business Department expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper entitled "New Business Department Expenses for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 13.)

By the Commissioner:

Q. That "Superintendence—Altoona" seems to be a good, growing boy on that last one, does it not? A. That isn't all Altoona superintendence.

Q. That also includes general labor? A. General labor and Altoona superintendence. The reason that some of these items are bracketted is due to the fact that for the first three years shown, '31 to '33, certain expenses were allocated among the various companies on a revenue basis, and we expect, if you think it is necessary, to give the details of the allocation later on.

Q. All right.

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By Mr. Miller:

Q. Will you examine sheet marked Commission's Exhibit No. 13? Is that the statement of New Business Expenses to which you referred? A. Yes; it is.

Q. And is it self-explanatory? A. I think so.

Q. Do you desire to make any comment on it at this time?

A. No; not at this time.

Q. Have you prepared a statement of the General Administrative Expenses and Other General Expenses for the period from January 1, 1931 to June 30, 1936? A. I have.

(Paper, consisting of two sheets, entitled "General Administrative Expenses for the period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 14.)

By Mr. Miller:

Q. I will ask you to examine the paper marked Commission's Exhibit No. 14 and state if those are the statements referred to? A. They are.

Q. Do these statements include charges for taxes or depreciation? A. They do not.

Q. Have you prepared detailed statements showing the monthly charges for each Public Service Commission account indicated by Column (c)? A. I have prepared some detailed statements but our analysis work has not been finished yet.

Q. Do you consider that a detailed analysis of those accounts is essential to a proper consideration of this exhibit by the Commission? A. Well, I haven't come to any conclusion on that score yet. Our analysis work is proceeding all the time and a lot depends on what we find in the various expenses.

Q. Pending your detailed analysis, do you desire to comment on the expenses covered by Exhibit No. 14 at this time?

A. I do not.

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Q. Have you prepared a statement of the non-operating income? A. I have prepared a statement of the non-operating revenues for the five and one-half year period.

(Paper entitled "Non Operating Revenues for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 15.)

By Mr. Miller:

Q. That is the five and a half year period ending June 30, 1936, I presume? A. That's right.

Q. As all your statements have? A. That's right.

Q. I show you paper marked Commission's Exhibit No. 15, and ask you if that is the statement referred to? A. Yes; it is.

Q. Have you prepared a statement of the non-operating expenses for the same period? A. I have.

(Paper entitled "Non Operating Expenses excluding Taxes for the Period from January 1, 1931 to June 30, 1936" marked Commission's Exhibit No. 16.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 16 and ask you if that is the statement referred to? A. It is.

Q. Is that a complete statement of the non-operating expenses for the period indicated? A. It is complete, except for the item of "Taxes," which I have left out. The taxes will be separately considered.

Q. Now, referring to Exhibit 15, do you consider that the non-operating revenues reflected thereon, represent earnings from respondent's operations? A. I do for the items of Merchandise Sales Account No. 600, Jobbing Work Revenue, Account No. 601, and Rent from Lease of Other Properties, Account No. 603—those three accounts, and I would consider

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those items to represent income available for return on the property.

Q. Why would you exclude the remainder of the non-operating revenues from the amount available for return? A. For the reason that the interest received, as dividends, and the various small items—some of the small items here represent income received from investments on property values which are not or will not be included in the rate base.

Q. Now, what non-operating expense items, if any, shown on Exhibit No. 16, do you consider should be classified as operating charges? A. Merchandise Sales Expense, Account No. 650; Jobbing Work Expense, Account No. 651; Lease of Other Properties Expense, Account No. 653; and Uncollectible Non-Operating Revenues, Account No. 659.

Q. Would you include as an expense or as expenses all uncollectible non-operating revenues? A. No; only the portion representing the uncollectible non-operating revenues that were included in the income available for return.

Q. Have you estimated the company's annual tax liability? A. Before we get on that, I would like to say with reference to Exhibit 15; if any of those revenue items, or if it develops that any of those revenue items, those items of revenue were received from property and will not be included in the rate base later on, then I would not include those items in the income available for return. Now, that will apply particularly to the item Rent from Lease of Other Properties. It depends on whether or not the property is in the rate base.

Q. Have you estimated the company's annual tax liability? A. No; I have not.

Q. Why not? A. Because five major kinds of taxes depend upon the amount of revenues which respondent receives. The Commission will determine the proper allowable revenues in disposing of this case, so I was unable to estimate the tax liability for those five kinds of taxes.

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Q. Will you state what the taxes are? A. Federal Income Tax, State Income Tax, State Gross Receipts Tax, Local Gross Receipts Tax and Federal 3% Tax on Electrical Energy.

By the Commissioner:

Q. Is that all there are so far? A. Those are the items that are referred to as being undetermined until we know what the company's earnings are.

By Mr. Miller:

Q. What are the Federal Income Tax rates as specified in the Revenue Act of 1936? A. The Federal Income Tax rates are as follows:

First \$ 2,000 of Taxable Net Income at 8%.

Next 13,000 of Taxable Net Income at 11%.

Next 25,000 of Taxable Net Income at 13%.

Over 40,000 of Taxable Net Income at 15%.

Q. Are those rates applicable to a company such as the respondent? A. Yes.

By the Commissioner:

Q. They are the 1936 rates? A. They are the 1936 rates.

By Mr. Miller:

Q. With reference to the State Income Tax for 1936 for a company of this character, what are they? A. The State Income Tax is levied at the rate of ten per cent of the net income.

Q. Is the State Income Tax a permanent tax or purely a temporary tax?

Mr. LaBrum: Just a minute. Nobody knows whether that is going to be permanent or not. We hope not. The witness cannot very well answer the question, therefore, except that the tax act says, "It shall be."

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The Witness: The act at the present time, as it is now written, is for a period of two years; for a corporation such as the respondent, which file tax returns on a calendar year basis, the effective years will be the calendar years 1935 and 1936. In 1935 the rate was six per cent, whereas in 1936 the tax rate is ten per cent.

By Mr. Miller:

Q. What were the State Gross Receipts Tax rates in the years 1935 and 1936, and what will the rate be in 1937?

The Commissioner: Just a minute. Can this witness tell what the rate will be in 1937?

The Witness: Well, I know under the present laws what the rates will be.

Mr. Miller: Under the present laws, Mr. Commissioner.

The Commissioner: All right.

The Witness: Up to 1935, the rate was eight mills. From January 1, 1935 to June 30, 1936, the rate was fourteen mills. For the last six months of 1936, the rate is twenty mills. Beginning in January, 1937, the rate will again be back to eight mills, unless the twenty-mill tax or the fourteen-mill tax or some other tax is substituted therefor.

Q. What is the local gross receipts tax? A. The rate is three per cent on the gross revenues received from consumers within the corporate limits of the City of York.

Q. And what did that amount to in 1934 and 1935? A. In 1934, it was \$32,142 and in 1935, it was \$31,999.

Q. What is the rate and basis of the Federal tax on electrical energy? A. This tax is imposed upon electrical energy sold for domestic or commercial consumption not for resale, at the rate of three per cent of the revenues received from such sales.

R. A. McShea, Jr.—For Complainant—Direct

Q. What other taxes does respondent pay, as reflected on its books? A. Federal Capital Stock Tax at the present rate of \$1.00 per \$1,000 of the declared value of the capital stock. The company estimates the liability for this tax for the six months ended June 30, 1936 at \$3,306, or at the rate of \$6,612 per annum.

A state capital stock tax is also paid. This tax is at the rate of 5 mills on the value of the capital stock as computed by the Pennsylvania Department of Revenue. The company recorded a liability of \$33,000 for 1934, \$32,600 for 1935 and \$16,500 for the first six months of 1936.

Q. Are there any other taxes? A. In addition, there are a few odds and ends which, in 1934, amounted to \$1,736 and in 1935, they amounted to \$1,583.

Mr. Miller: Mr. Commissioner, at this time I would like to withdraw Mr. McShea unless Mr. LaBrum wants to cross-examine him on his testimony so far.

The Commissioner: Mr. LaBrum, naturally, wants to have an opportunity to examine all these exhibits.

Mr. LaBrum: Absolutely; yes, sir.

Mr. Miller: My thought is that Mr. McShea is not prepared to comment on the operating and other items until the detailed analysis has been completed.

Mr. LaBrum: All I want understood is that these reports and records are as shown by the books without any adjustments.

Mr. Miller: That is correct.

The Commissioner: It is understood that Mr. McShea will step down at this time and be recalled for further examination later on.

Mr. Miller: I think, however, Mr. Commissioner, that Mr. LaBrum should go over Mr. McShea's testimony so far and be prepared to cross-examine him on it when we have completed Mr. McShea's direct testimony.

H. Root Palmer—For Complainant—Direct

Mr. LaBrum: Oh, yes; sure.

Mr. Miller: Mr. Commissioner, I will now offer in evidence Commission's Exhibits Nos. 1 to 16, inclusive.

The Commissioner: They will be admitted into the record with the understanding that those purporting to be copies of agreements and papers of that nature are being admitted to the record subject to the opportunity to be given to the respondent for examination and correction, if necessary, at the later hearing.

Mr. Miller: That will be perfectly satisfactory, Mr. Commissioner.

H. ROOT PALMER, having been duly sworn, was examined and testified as follows:

By Mr. Miller:

Q. What is your full name, Mr. Palmer? A. H. Root Palmer.

Q. By whom are you employed and in what capacity? A. electrical engineer, the Public Service Commission of the Commonwealth of Pennsylvania.

Q. Will you briefly outline your experience in the management and operation of electric companies? A. I have been identified with the electrical industry continuously since 1894. Starting as an arc lamp trimmer, I was fireman, operating engineer, wireman, lineman, trouble inspector, line foreman, superintendent of distribution of overhead and underground systems, general superintendent, and vice president and general manager.

Q. With what companies have you been associated in electrical business? A. For the first few years with the electric company at Morristown, New Jersey; going to Norfolk, Virginia, as foreman of the gas company, which also operated an

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electric plant, and through mergers of electric light and railway I progressed to superintendent. Later, following mergers of companies in Norfolk and Richmond, Virginia, I became general superintendent of light and power.

About January 1, 1919, I became vice president and general manager of the Harrisburg Light & Power Company. This last company operated also a steam heating system.

Q. How long did you remain in that position? A. Until 1926, I think—about '26 or '27.

Q. And now, during your connection with these companies, which you have mentioned, will you state if any construction was performed under your direction? A. It was. I was in responsible charge of the planning, designing, purchasing, construction of a new turbo generating station in Norfolk and also in Richmond, Virginia, and a 115,000 volt transmission line connecting these two cities; of extensions, additions and rebuilding of steam, electric and hydro plants. I also acted in an advisory capacity in connection with a new turbo generating station and transmission system in Lexington, Kentucky.

Q. Are you a member of any engineering societies in Pennsylvania? A. I am, and I am a registered professional engineer in Pennsylvania.

Mr. Miller: I propose, Mr. Commissioner, to have Mr. Palmer testify as to an investigation made by him to determine the portions of the plant of the respondent company applicable to the supply of electric energy, and applicable to the supply of steam, and the segregation made by him of the various portions of the plant to various uses; also, the property used and useful in the public service.

Cross-examine as to qualifications.

(Cross-examination as to witness' qualifications waived.)

H. Root Palmer—For Complainant—Direct

By Mr. Miller:

Q. Have you, Mr. Palmer, made an investigation of the steam station and other facilities of the Edison Light & Power Company, located in the City of York, in connection with this case? A. I have.

Q. When did you make that investigation? A. September 1, 2 and 10, and October 8, 1936.

Q. What was the reason for your inspection? A. I was instructed to make an investigation of the steam generating station for the purpose of determining the facilities therein used and useful to the Light Company in supplying electric service.

Q. Did your inspection include the land on which these facilities were located and the disposition made as to its use?

A. It did. Measurements of the property were made which were later checked with blue-prints of the company, the discrepancy being so small that the company's measures were used as the basis of the allocation.

Q. Have you prepared a sketch showing the result of your inspection and study of the item of land? A. I have.

(Paper entitled "Summary of reproduction cost estimate as of June 30, 1934. From Page 32 of report No. 3054—Day & Zimmermann, Inc." marked Commission's Exhibit No. 17.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 17—

The Commissioner: Just a moment.

By the Commissioner:

Q. Does this company manufacture gas? A. The York Company?

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Q. Yes. A. Not in connection with the steam generating plant.

By Mr. Miller:

Q. Before we go into that, I show you sheet marked Commission's Exhibit No. 17, and ask you what that represents.

A. Exhibit 17 is a summary of the reproduction cost estimate, taken from page 32 of the Day & Zimmermann, Inc., report No. 3054 of the property of the Edison Light & Power Company as of June 30, 1934.

The estimated cost of reproduction new and less depreciation are the values that are shown in the report referred to, and no study has been made as to the reasonableness of the direct costs nor of the depreciation applied.

Q. This segregation of the various classifications (indicating), is that yours or is that in accordance with the total reproduction cost estimate of Day & Zimmermann? A. Yes, sir.

Q. And the various amounts are those arrived at by Day & Zimmermann? A. Yes, sir.

By the Commissioner:

Q. The grouping of these items under these various headings, "Steam Generating System, Transmission System" and so forth, is that yours or the grouping of Day & Zimmermann?

A. Day & Zimmermann.

Mr. Miller: These figures, Mr. Commissioner, were taken without any adjustment from the Day & Zimmermann report.

The Commissioner: The grouping is exactly the same?

Mr. Miller: That's correct, and of course this exhibit only deals directly with costs.

The Witness: The steam generating group of accounts, No. 204 to Account 215, inclusive, estimated cost

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of reproduction new, \$1,348,440; less depreciation, \$1,195,660.

By Mr. Miller:

Q. Mr. Palmer, I don't think that it is necessary to read those amounts into the record. The exhibit speaks for itself pretty much, does it not? A. It does.

(Paper consisting of sixteen sheets, entitled "General Plan of Property Steam Station Edison Lt. & Pr. Co., York, Pa." marked Commission's Exhibit No. 18.)

By Mr. Miller:

Q. I show you a group of sheets marked Commission's Exhibit No. 18, and ask you what that is. If Mr. LaBrum will permit a leading question: Does that exhibit show the results of your segregation and study? A. It does—the details.

Q. Now, turn to the first sheet of that exhibit. What does that represent? A. The first sheet is a general outline of the property, not prepared to scale, showing the various divisions and the use of those divisions of property as indicated on the general sketch. Schedule No. 1 shows the—

Q. That is the second sheet of the exhibit, is it not? A. It is—the division of the property as shown on the general schedule, with the square feet area shown, and the allocation as between electric and steam, giving the per cent of allocation, and the amount based upon the estimated reproduction cost in the Day & Zimmermann report.

Q. In other words, you have segregated the property according to your observations on the ground and you have allocated the cost figures, the direct cost figures of the Day & Zimmermann report applicable to those properties in accordance with your allocation resulting from your observations, is that correct? A. Yes, sir, using the area of the property as shown in the reproduction cost estimate.

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Q. Now, do you follow that same method for the buildings on the land? A. Yes, sir.

Q. And is the result, obtained along the same lines, shown in Schedule No. 2? A. It is shown on Sheet 2, the total of the buildings. The total allocation of the land is shown on Sheet 1.

Q. Well, now, Mr. Palmer, I was talking about Schedule No. 2. Does Schedule No. 2 show an allocation of the Day & Zimmermann figures? A. It does.

Q. But the allocation on Schedule 2 does not relate to buildings, you mean? A. Schedule No. 2, the allocation is on buildings.

Q. And in Schedule 1, the allocation is on land, is that right? A. On land; yes, sir.

Q. This Sheet No. 1, which is the fourth sheet of the exhibit, represents what? A. A tabulated summary of the allocations, which are shown diagrammatically on Schedule 1.

By the Commissioner:

Q. Of the land? A. The land.

By Mr. Miller:

Q. Now, turning to Sheet 2, Mr. Palmer, what is Sheet 2? A. It shows a tabulation of the allocation as shown diagrammatically of the buildings on Schedule 2. It shows the total cost, the estimated cost of the buildings and the allocation as between the electricity and steam use.

Now, do you desire to comment upon the two further? A. The item of \$23,565 for old boiler room building is used jointly by the steam and electric companies as repair and storage for boiler plant and some transformers for the electric company. The steam company requires such facilities in operating the boiler plant while the use by the electric company is of a temporary nature for the equipment stored. However, in allocation of 25% for electric and 75% for the steam company use has been applied as reasonable.

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The item of \$360 for railroad siding is of use by both electric and steam companies, therefore an allocation of 50% to each has been applied as reasonable.

Q. Now, referring to Sheet 3, what does that show? A. A summary of the items contained in the estimated reproduction cost, Classification Account 209 Boiler Plant Equipment, the property being allocated between steam and electric, the allocation having been made in the item of Exhaust—Heaters, Atmospheric and Piping on a fifty per cent basis to each. The piping is used jointly by both the steam and the electric, and the amount of piping required for the operation of either one independently would be not less than and would probably exceed one-half of the appraised cost. Therefore, a fifty per cent valuation has been applied as reasonable.

Q. You mean, allocation I take it? A. A fifty per cent allocation.

Q. The totals shown on Sheet No. 3 and I believe this is also true of the other sheets, compare with the Day & Zimmermann appraisal totals, do they not? A. They do. They compare with the totals in Exhibit 17.

Q. However, the allocation is your own allocation? A. It is.

By the Commissioner:

Q. That is, the allocation as made between the electric and the steam? A. Yes, sir.

Q. The current details are, however, those in the Day & Zimmermann report? A. They are.

By Mr. Miller:

Q. Now, is Sheet 4 self-explanatory or do you desire to explain that? (No answer.)

Mr. Miller: The statements that Mr. Palmer began to make with reference to these sheets, I think it would

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save time without reading them. They will be submitted to the respondent for cross-examination in any case.

By Mr. Miller:

Q. Do you have any—

(Discussion off the record.)

By Mr. Miller:

Q. All of this property, which is involved in these allocations, is owned, is it not, by the Electric Company? A. It is included in the reproduction cost new by Day & Zimmermann as the Edison Light & Power Company's property.

Q. So far as you know, the Edison Light & Power Company, the respondent, owns this property? A. It does.

Q. And holds title to it? A. Yes.

Q. And your segregation is based on use and not ownership? A. It is.

Q. Now, do you desire to add anything to the comments appearing on Sheet 4? A. No, sir; that's self-explanatory.

Q. Sheet 5? A. No, sir.

Q. And on Sheet 6, is there any additional explanation you desire to make? A. No, sir; not at this time.

Q. Well, now, on Sheet 6, there is an electrical generator, which is listed at \$18,844. Is that used and useful in the Electric Company's business? A. That item is a generator in connection with the engine on Sheet 4, and it is connected with the engine as indicated on Sheet 4.

Q. Well, now, do you mean there is a duplication in the Day & Zimmermann figures with reference to this generator? A. No, sir.

Q. The generator appears only once, is that right? A. The engine appears on Sheet 4 and the generator on Sheet 6. That is a combined unit, engine and generator, and under the Commission's uniform classification of accounts, the engine and the generator are separated.

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Well, now, you state that the generator, as distinguished from the engine, has been out of use for years. Where did you obtain that information? A. From the operating records of the company, which show that no current has been generated by that engine.

Q. Could you determine from an examination of that generator whether it had been used recently or not? A. No, sir.

Q. Do you mean you could not determine that it had been used? Could you determine whether it had been used recently or not? A. No; only from the records, that there had been no current generated by it.

Q. The engine was not in use, was it? A. No.

Q. Neither the generator nor the engine was in use when you observed them? A. No, sir. This is a complete unit, Mr. Miller, and the generator is on the same shaft with the fly-wheel of the engine. It is a complete unit. You can't operate one without the other.

Q. Well, if the generator has been out of use for years, the engine must have been out of use for years, is that right? A. I state there on that footnote, on Sheet 4—

Q. Will you just answer the question? (No answer.)

Mr. Miller: Will you read the question?

(Question read.)

The Witness: It was.

By Mr. Miller:

Q. Now, turning to Sheet 7, Mr. Palmer, have you any comment in addition to that which appears on that sheet? A. No, sir.

Q. On Sheet 8, I note that there is no portion of all that equipment allocated to the electric company. A. There is not.

Q. Now, did you base that one hundred per cent allocation to the steam company upon your observation or upon information given to you by the company, or both? A. From the char-

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acter of the equipment and observation—principally from the character of the equipment. It is used in connection with handling fuel for the boilers.

Q. Do you have any comment, in addition to that appearing on Sheet 9? A. No, sir.

Q. I notice various numbers appearing on these sheets—No. 215 on Sheet 9, No. 214 on Sheet 8, "Other, Power Plant Equipment" and "Coal Storage & Weighting Equipment", respectively. Are those Day & Zimmermann numbers or the respondent's account numbers, or Commission numbers? A. Commission account numbers for the classification of property.

Q. Those are Commission account numbers? A. For electric companies; yes, sir.

Q. Now, what is shown on Sheet 10? A. A summary of the allocations as shown on Sheets 1 to 9, inclusive, with the Commission's account numbers, the items, the per cent of allocation to electric company and per cent allocated to steam company, with the proportion of the estimated cost.

Q. Now, what is shown by Sheet 11? A. Those costs on Sheet 10 are for structural costs only.

Sheet 11 is a condensed summary of the tabulation on Sheet 10, with the percentages omitted, the total reproduction cost of the steam generating system group as shown in the Day & Zimmermann appraisal, the total allocated to the electric company and the total allocated to the steam heat company. Those costs are direct costs only.

Q. Now, are Sheets 12 to 16, inclusive, self-explanatory? A. Sheet 12 is a condensed summary of the estimated cost of reproduction new and less depreciation, as shown in the steam generating group. Accounts 204 to 215, inclusive, after giving effect to the allocated segregation as shown on Sheets Nos. 1 to 9, inclusive, and as summarized on Sheets 10 and 11.

The depreciation as applied and shown on Sheet 12 is the same ratio between the estimated cost of reproduction new

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and less accrued depreciation as applied and shown on Sheet No. 10.

Q. Is Sheet 13 self-explanatory? A. Sheet 13 is a detailed summary of the property included in the steam generating system group, Accounts 210 and 212, Exhibit No. 1 or Exhibit 17, and is shown in detail, with description and value, on Sheets Nos. 4 and 6 of Exhibit No. 18, of the facilities not used or useful in rendering electric service by the Edison Light & Power Company, amounting to \$55,118 on Sheet 4 and \$18,844 on Sheet 6, a total appraised value, on the basis of direct costs, of \$73,962.

Q. What is shown on Sheet 14? A. Sheet 14 is a detailed summary of the property included in steam generating system group accounts No. 204 to 215, inclusive, as shown on Sheet No. 12, excluding the property not used or useful as shown on Sheet No. 13, amounting to a total for this group of \$767,361 new and \$664,907 less depreciation.

Q. What is shown on Sheet 15? A. Sheet 15 is a detailed summary of the property of the steam generating system group, Accounts 212 and 213, as shown in detail on Sheets Nos. 6 and 7, with a description and value of the facilities used exclusively for York Railways Company service, amounting to \$64,951 on Sheet No. 6 and \$19,790 on Sheet No. 7, a total appraised value, on the basis of direct costs, of \$84,651.

Q. And on Sheet 16, what is shown? A. Sheet No. 16 is a detailed summary of the property included in the steam generating system group, Accounts 204 to 215, inclusive, as shown on Sheet No. 14, excluding the property used exclusively for York Railways Company service, amounting to \$682,710 new and \$594,750 less depreciation.

Q. Now, Mr. Palmer, I can understand why you set up a tabulation in 214 eliminating \$73,962 worth of property not used or useful in rendering electric service, but will you explain why you eliminated the property used exclusively for York Railways service? Why do you set up Sheet 15, showing

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\$84,651, being the cost figures applicable to property used solely for York Railways Company service and why did you eliminate that amount on Sheet 16? A. That was for the purpose of showing the difference between the actual cost of purchased energy and the price at which energy was charged to the Railways Company.

By the Commissioner:

Q. I don't understand— A. We have another exhibit in which that will be used.

• Q. I know, but the point is, you set up a figure on Sheet 12 of \$841,000, then show that property not used and useful to the extent of \$73,000; is that right? A. Yes, sir.

Q. And you deduct that from the 841,000? A. Yes, sir.

Q. And you get, on Page 14, \$767,000, and then you have another figure of 84,000 of property used exclusively by York Railways, and then you deduct the 84,000 from the 767,000; is that right? A. Yes, sir.

Q. Mr. Miller's question was: Why did you deduct that? A. To get a comparison of the cost of the purchased current—the total cost of the purchased current to the Light Company.

Q. The point I am trying to get in my mind is this: Not why you are comparing it but why you deduct it. In your opinion, is that part of the property used and useful by the Edison Light & Power Company properly considered in a rate base? A. This is property used and useful exclusively for the Railways Company—one company.

Q. I am talking about that used in the Edison Light & Power set-up, that \$84,000. Do you think that is proper? Why do you deduct it? A. Under the present rate to the Railways Company for power, the losses are absorbed by the Light Company.

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By Mr. Miller:

Mr. Commissioner, I think it is relevant to make this segregation for the reason—

The Commissioner: I did not think it was not relevant. I thought you were going one step further away. Is that the only reason you deduct it, to make that comparison?

Mr. Miller: Yes. We prepared it in this manner so it would show all property allocable to the York Railways Company's use, and the purpose being to examine the rate charged the York Railways on the basis of property properly allocable to their use.

Now, ordinarily, it is impossible to segregate the property of an electric company and say, "This is used exclusively for one consumer"—that would not be possible, but in this case we think it ought to be done in order to present the proper picture to the Commission.

The Commissioner: I understand that, but what I am trying to find out for my own information: Granting that this \$84,000 worth of property is used for York Railways electric service, it still belongs in the rate base of the Edison Light & Power Company, does it not?

Mr. Miller: That is true, but not necessarily.

The Commissioner: That is what I was trying to find out.

Mr. Miller: Mr. Commissioner, we are simply putting in this exhibit to show that a certain portion of the property would be allocated definitely to the York Railways Company and a certain portion to the domestic and other service of the company.

The Commissioner: I understand that, but certainly that \$84,000 worth of property is used in the production and distribution of electricity, is it not?

Mr. Miller: That's right; yes, sir.

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The Commissioner: And the Edison Light & Power is the producer and the transformer of that power, and it is their business to furnish power, and it is used in the set-up of the Edison Light?

Mr. Miller: That is correct; yes, sir.

(Paper, consisting of two sheets, entitled "C-11108—Cost of Purchased Energy--Adjusted" marked Commissioner's Exhibit 19.)

By Mr. Miller:

Q. I show you Commissioner's Exhibit 19, and ask you what that shows? A. That is a statement of the cost of purchased power by the Edison Light & Power Company, the credits to purchased power transferred to the York Railways for power, to the York Railways for light, and respondent's own use, with the net charge for purchased power.

By the Commissioner:

Q. When you say "credit York Railways—power, York Railways—light, and respondent's use", the respondent buys it all and sells to the York Railways for light and power, does it not? A. It credits the purchased power for the amount used.

Q. But, technically, it sells it to the York Railways for light and power just as it sells it to the other customers of the Edison Light, does it not? A. That is handled as a credit.

Q. Whether it gets paid cash or whether it gets a credit, it amounts to the same thing, actually? A. Yes. Sheet No. 2 shows the total purchases of power for the years 1931 to 1935, inclusive, the total number of kilowatt hours purchased by the Edison for the five years, 1931 to '35, and the average cost per k.w. hour to the Edison Light & Power Company for purchased power for those five years.

Line 4 on Sheet 2 shows the number of kilowatt hours supplied to the York Railways Company for power, and Line

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5 shows the total amount of credit or charge against the purchased power for those number of kilowatt hours at the average cost per kilowatt hour.

By the Commissioner:

Q. That is, supplied to the York Railways Company? A. Yes, sir. Now, referring to Sheet 1, the next charge is the amount shown on the company's records for purchased power. Putting the Railways power purchases and sales back into it, the purchase of \$65,973 in 1931 with the \$528,922.56 make the total cost of the power to the Edison Light Company of \$594,895.89. Deducting from that the purchase price of Railways power, as shown on Line 5 at the bottom of Sheet 2, of \$67,637.96, it shows the net charge adjusted of \$527,257.93.

Q. Now, excuse me. Let me understand that. You have a figure of \$528,922 net charge? A. As shown in the company's records for 1931.

Q. Now, you add the York Railways power of \$65,900? A. As charged to the Railways.

Q. That is charged to the Railways? A. Charged to the Railways.

Q. \$65,900? A. Yes, sir.

Q. Do you mean that the purchase price by the Edison Light & Power from the companies from which it buys at wholesale is \$67,000? A. As shown on the bottom line of Sheet 2; yes, sir.

Q. Do I understand from that, then, that the purchase price is greater than the amount charged for furnishing it to the York Railways? Is that what you mean? A. That is the result shown by this calculation.

Q. Well, I understood from the previous testimony that the wholesale power was purchased at a little less than eight mills and sold to the York Railways at about nine mills. You heard that testimony? A. I did.

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Q. That would be just the reverse of this picture, would it not? If they buy for practically eight mills and sell it for nine, there is a difference in favor of the Edison Light in that set-up, if that were the fact, isn't that so? A. Yes, sir.

Q. I thought I understood you to say that it would be the reverse of that; would it? A. It would. As I recall the testimony—

Q. I just want to get myself clear as we go along. A. As I recall, that testimony referred to the purchases under the new contract, which is at a lower rate. That is borne out by this Exhibit for 1931, '32 and '33; there was a loss. For 1934 there was a very slight loss, and for 1935 there was a small profit.

Q. I see. That is what I was trying to get in mind.

By Mr. Miller:

Q. Is that situation reflected by the figures in your exhibit, Mr. Palmer? A. Yes, sir.

Mr. Miller: Now, Mr. Commissioner, I would like to defer any further detailed examination on that subject. I would like to put in one more exhibit from Mr. Palmer.

By the Commissioner:

Q. Then, as I understand the picture, according to your analysis Edison Light & Power for the years 1931, '32 and '33, in some appreciable amount, about 200,000, or between 100 and 200,000, bought power at wholesale under some agreements with other companies and sold this particular amount of power to the York Railways for less than what it paid for it? A. It did.

Q. And that situation has now been corrected, in 1935, at least, where there is a difference of a little more than that amount in favor of the Edison Light & Power? A. That's

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right. In addition to those losses is the operating expense and the carrying charges on this equipment—

Q. Yes; that was without any cost to the Edison Light & Power delivering it to the York Railways. A. They are handling it.

Q. That is to say, without any such charges? A. Yes.

Q. That is also reflected in the item for 1935. If you deduct from the \$38,000 charged to the York Railways the proper charges against that amount on the electric company's books, that we have just referred to, then the difference between what it bought the current for and what it sold it for—those charges might disappear, might they not, even in 1935? In other words, if all the charges were included, there might not be any profit at all? A. It would be converted into a loss.

(Paper, consisting of six sheets, entitled "Operating Expenses Generating by Steam Power Years Ended Dec. 31, 1931 to Dec. 31, 1935, incl." marked Commission's Exhibit No. 20.)

By Mr. Miller:

Q. I show you Commission's Exhibit No. 20 and ask you what that represents. A. Exhibit No. 20 is a summary of the operating expenses for the steam generating station group for the years 1931 to 1935, classified under the Public Service Commission's system of uniform classification of accounts, showing the total operating expenses for the year, also the amount of credit to operating expenses for steam delivered to the steam heating Company and the net amount of operating expenses after deduction of this credit.

Q. Now, Mr. Palmer, I just want to ask you one question on that exhibit at this time: What is that figure in the 1931 column on the first page, \$36,265.92, net cost? What do you mean by "net cost"? A. That is the total cost of operating the steam generating plant, less the credit for steam delivered

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to the Steam Heating Company. The total cost of operating expenses and maintenance for the plant is \$117,975.76.

Q. Well, then, does that represent a loss on steam generation by the Electric Company? A. That's the difference between the cost of operating the steam plant and the amount received for steam transferred to the Steam Heating Company. The cost of \$117,975.76 includes the expenses in connection with electrical operation and not properly chargeable to steam generation. The details for those years are shown on the following five sheets.

Mr. Miller: I will defer further direct examination on this subject at this time ~~it~~ satisfactory, Mr. Commissioner.

By the Commissioner:

Q. Mr. Palmer, as I understand it, the next five sheets are records showing the difference between the total cost of generation of steam power and the adjusted total of the difference between the second last line and the last line, is that right? A. Yes, sir.

Q. And you have adjusted it to bring it down to that bottom figure and that adjustment for the three years is shown on separate sheets? A. Yes, sir.

By Mr. Miller:

Q. Mr. Palmer, your figures in Exhibit No. 20 were obtained from what source? A. From the company's records.

By the Commissioner:

Q. From the books of the company? A. Yes, sir.

By Mr. Miller:

Q. Are those figures adjusted by you or are they taken directly from the books of the company without adjustment, except for the adjusted totals? (No answer.)

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By the Commissioner:

Q. Except where you say "adjusted totals"? A. By—

Q. Down to the sum of the total figures, of 117, 116, 132, 129, and 139—down to that figure, are all those items taken from the books? A. On the first sheet?

Q. Yes. A. Everything except that last line is taken from the company's records.

Q. Where you say "adjusted total" and you have the adjustments on the separate sheets? A. For the allocation between the electric and the steam and the transmission and the total cost on those individual sheets checked with the totals on Sheet 1.

By Mr. Miller:

Q. Now, just one question, Mr. Palmer, in connection with this Exhibit No. 20: You indicate there the net cost figures that the company sustained and lost in the generation of steam power for this affiliate steam heating company in each of the years, 1931 to 1935, inclusive? A. Yes, sir.

Mr. Miller: That is all at this time.

(The sitting Commissioner here announced that the next hearing in this matter would be held on November 18 and 19, 1936, at Harrisburg, starting at 9:30 o'clock A.M.)

Colloquy

Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Pennsylvania, Wednesday, November 18, 1936.

Commissioner STAHLNECKER, Presiding.

A
APPEARANCES:

S. G. MILLER, Esq., Harrisburg,
for the Public Service Commission, Complainant;
V. K. KEESEY, Esq., York, Pa.,
CHARLES H. ENGLISH, Esq., Erie, Pa., and
J. HARRY LABRUM, Esq., Philadelphia, Pa.,
for the Respondent.

The Commissioner: Before we proceed with the testimony of witnesses I would again like to renew the suggestion that I made at the previous hearing, and that is, to ask at this time whether the company is willing to state, or is able to state, what it is contending for in the matter of a rate basis, and the amount of return that it is entitled to, in an effort to shorten this proceeding if possible.

Mr. Miller: The Commission is prepared to give the figure we contend for, if the company cares to make a statement.

Mr. English: Suppose we have the Commission's figure. We are prepared to make a statement.

The Commissioner: We would like to know what the company is contending for if it is in position to state it at this time.

Mr. English: Certainly we are. The company takes the position that in the city of York we are furnishing to the people three related types of service steam, trans-

Colloquy

portation and electricity; that in determining the amount which the owners of these properties are entitled to receive for service the picture should be considered in its entirety. On that account we think it is not only the right, but the duty of the Commission to keep constantly in mind in these proceedings the factors to which I have just referred. We say, therefore, that the situation is not adequately met by isolating the property used and useful in rendering one of these particular services, but that all must be considered as a whole.

With that thought in mind we are prepared to show, we think, that the properties devoted to the public service along these lines, considered as a whole, to the extent that they should be considered for rate making purposes by the Commission, will have a value of at least eight and a half million dollars. That, sir, is our position.

The Commissioner: Do I understand from your statement, Mr. English, that your figure of eight and a half million dollars, which you advance in this matter, includes the value not only of the Edison Light and Power Company property, but also the steam heating property, plus the property of the York Railways.

Mr. English: Not in its entirety.

The Commissioner: Well, in part at least.

Mr. English: In part.

The Commissioner: York Railways.

Mr. English: Yes, sir.

That is our position. We think it is the duty of the Commission to keep in mind that we are rendering this service to the people of York.

The Commissioner: So that your position is that the amount of return received by the Edison Electric in this situation, the annual return, should be affected partly by York Railways?

Colloquy

Mr. English: To some extent.

The Commissioner: At least to some extent.

Mr. Miller: You mean that the rates of the York Edison Company for electric service should be based upon a rate based on eight and a half million dollars.

Mr. English: The Commission has stated the conclusion too narrowly. We are not contending that the property of the York Edison Company is worth eight and a half million dollars. I tried to make it clear to Your Honor that we take into consideration the factors which we think are material.

The Commissioner: I thought my restating of what you said did not misinterpret your figure.

Mr. English: You stated it better than I did.

The Commissioner: Do I understand that the amount of return that you feel Edison Light and Power should be allowed is affected in whole or in part by the value of some of the facilities of the York Railways Company.

Mr. English: I want you so to understand the situation.

The Commissioner: That is your position?

Mr. English: Yes sir.

Mr. Miller: This proceeding is to determine the reasonableness of the rates paid by the consumers of electricity in York and not by persons who ride the street cars, nor by the consumers of steam, and the theory of the Commission is that the rate base upon which a proper return to the York Edison Company should be calculated is the value, the fair value of the property used and useful in the supply of electricity to the consumers of the York Edison.

Mr. English: As I understood the record Your Honor asked a question. Now, do you want it argued.

H. Root Palmer—For Complainant—Direct

Mr. Miller: I might state, relative to the Commission's figure, we think we can show that the value of the property upon which rates to the consumers of York Edison, the electric consumers of power should be based is approximately \$4,250,000.

The Commissioner: One figure is just twice that of the other apparently.

Mr. English: Before we get through we hope to bring great light even to the mind of counsel of the Commission.

The Commissioner: I confess you will have to bring a great light to my mind.

Mr. English: Even that does not surpass our ambition.

H. ROOT PALMER, a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows:

Direct Examination

The Commissioner: At the end of the first day's hearing, Mr. Miller, you had developed through Mr. Palmer one thing, the matter of the purchase of wholesale power by the Edison Light and Power Company, sold by the Edison Light and Power Company to the York Railways. Apparently on the figures that were presented Edison Light and Power Company was buying at wholesale at a certain figure and selling it for some years at least at a less figure to the York Railways, even before adding to its wholesale price the proper cost that would necessarily be put upon it in transmitting that power to York Railways. I would like to have a little more detail, if you can develop that.

H. Root Palmer—For Complainant—Direct

By Mr. Miller:

Q. That appeared on Commission Exhibit No. 19, did it not? A. It did.

Q. Can you explain to the Commissioner in more detail just what that exhibit represents? A. With respect to the sale of energy by the respondent to York Railways Company, it appears from Commission Exhibit No. 19, that for example, in 1931 York Railways took 7,296,436 kilowatt hours of power, for which respondent received the sum of \$65,973.33, which is at an average rate of about 9 mills.

In all, in 1931, respondent purchased 64,818,576 kilowatt hours of electricity for service to its consumers. As in all electrical systems, not all of this quantity of electricity was accounted for, as an appreciable quantity is lost in transformer losses, leakage into the ground and dissipated in other ways. That quantity of electricity purchased by respondent cost \$600,986.48, which is at an average price of about 9.4 mills. Attributing no unaccounted for energy in connection with the sale to York Railways Company, and assuming only, for purposes of discussion, that respondent purchased no more than it sold to the Railways Company, that quantity of 7,296,436 kilowatt hours at the average price of 9.4 mills cost \$67,637.96. Thus it appears that respondent paid over \$67,000 for the current sold to the York Railways Company for something less than \$66,000. Manifestly, this is not a compensatory rate.

By the Commissioner:

Q. Now, that was before allowance for loss in handling, and before any proper charges to Edison Light and Power Company in handling that current, is that right? A. Yes sir. It appears from the study I have made that certain rotary transformers and certain switchboard equipment is used by respondent exclusively for furnishing service to York Railways

H. Root Palmer—For Complainant—Direct

Company. In treating of this property one of two courses may be followed, first, the property may be included in a reproduction cost estimate of property used and useful in the public service by respondent and if the rate for service by such equipment is found to be non-compensatory, the rate itself could be adjusted to bring about such a condition, and second, in view of the treatment of the revenue received from the sale of electricity to York Railways Company, namely, as a credit for the cost of purchased energy, so that such revenue does not appear as revenue to respondent, the property used exclusively for this service can be excluded from a reproduction cost estimate. I have chosen to exclude the property from the estimate. In so doing one arrives at a rate base of at least an estimate cost of property which is used in the public service and attributable to the revenue as received from the general public.

By Mr. Miller:

Q. Now, by rate base, or the estimate of cost of property used in the public service, what public service do you refer to and the rate base upon which rates to consumers should be based? A. Service rendered by the Edison Light and Power Company.

Q. To what consumers? A. Its classes of consumers, commercial, domestic and industrial.

Q. At the last hearing Exhibit No. 20 was discussed by you with reference to the cost of steam generated. In the allocation of that cost do you have any further explanation to make on that exhibit? A. Exhibit No. 20 is a summary of the operating expenses for the steam generating system group for the years 1931 to 1935, inclusive, classified under the Public Service Commission's system of uniform classification of accounts, showing the total operating expenses for the year, also the amount of credit to operating expenses for steam delivered

H. Root Palmer—For Complainant—Direct

to the steam heating company, and the net amount of operating expenses after deduction of this credit.

The net amount for operating expenses for the years 1931 to 1935, inclusive, as shown, has been adjusted to the amounts as shown on the detail sheets for the years as indicated.

Sheets designated 1931 to 1935, inclusive, of Exhibit No. 20 show the total operating expenses of the steam generating system for the years indicated, allocated between steam generation, electric generation and transmission system group, accounts Nos. 415 to 434, inclusive, of the Commission's Uniform Classification of Accounts for electric companies.

The allocations as shown are based on a field inspection of the operating conditions and the relation of expenditures to the various accounts for the conditions observed and corresponding to their separate operating companies.

The allocation to electric generation is based on the segregation of the electric and steam generating property and operations, on the basis that the operating expenses are confined to the turbine operation and auxiliary apparatus, the steam being brought to the turbine room and the electric energy delivered to the switchboard.

The allocation to the transmission system group is based on the segregation of operating expenses as if the steam generation and electric generation were removed and all energy, whether generated at another location or purchased, was brought to the switchboard for control and distribution.

The allocation to the steam generation is based on the segregation of the operating expenses as if the only purpose was for steam heating service independent of any electric generation.

The total operating expenses allocated to steam generation for the total operating expenses taken from the respondent's records and as shown on sheets designated 1931 to 1935, inclusive.

H. Root Palmer—For Complainant—Direct

Q. Well now, in connection with that allocation, will you turn to Exhibit 20 and give me the figure for the allocated cost of steam generated in 1935? A. \$88,805.

Q. And for that steam what did the respondent receive from the Steam Heat Company? A. \$81,709.84.

Q. Then the cost of generating the steam was approximately \$7,000, a little over \$7,000 more than the steam was sold for, according to your figures? A. Yes, sir.

Q. Now, will you take the comparable figure for 1932? A. The allocated cost was \$89,548 for steam generation.

Q. And what amount was received for the sale of such steam? A. A credit of \$88,608.48.

Q. And that is approximately \$1,000 difference, isn't it? A. Yes, sir.

By the Commissioner:

Q. You mean a thousand dollars less? A. A thousand dollars difference, yes, less.

By Mr. Miller:

Q. In 1933 what were the conditions as revealed by your figures? A. An allocated cost of production of \$87,481. and the amount received \$88,934.60.

Q. That represents a loss of how much?

The Commissioner: Not a loss.

The Witness: A gain. A gain of less than \$1,000.
\$500 or \$600 gain.

By Mr. Miller:

Q. And what were the conditions as revealed by your exhibit in 1934? A. The allocated cost for steam generation in 1934 was \$98,522, and the credit that was transferred \$96,728.27, a difference of \$1800, approximately, loss.

H. Root Palmer—For Complainant—Direct

Q. Will you give me the 1935 figures? A. Allocated expense for steam generation for 1935 \$102,898, and the amount of the steam transferred credit \$98,576.23, a difference of about \$4300 loss.

By the Commissioner:

Q. When you say credit so much, was any amount actually paid off to the Edison Light and Power Company for this steam delivered, cash paid? A. It was treated as a credit to the cost of operating the steam generating plant.

By Mr. Miller:

Q. Mr. Palmer, you eliminated from your testimony as part of a proper rate base the property used in the production of steam. Will you state the basis for that elimination? A. The basis of allocation of accounts 350 to 352 inclusive, 354 and 358 to 373 inclusive, the item of expense—

Q. Mr. Palmer, will you just tell me why you excluded that property? A. The allocation of the property which was used in connection with the generation of steam and the allocation of property used for generating electricity, and the allocation of the expense—

Q. I don't want the allocation, I want the reason for the allocation?

The Commissioner: Why did you eliminate the steam heat plant from this rate base of the Edison Light and Power Company; why is not that a proper part of the rate base; is what we want to know, in your opinion.

The Witness: Primarily it is for steam heating purposes and required for steam heating purposes. The boiler plant, the generation electricity, is in my judgment, incidental, except such electricity as is generated in connection with the steam heat system.

H. Root Palmer—For Complainant—Direct

By the Commissioner:

Q. Is it necessary in the operation of the Edison Light and Power Company to have this generating capacity in the steam heating plant equipment? A. It is not. The entire electrical requirement of the Edison Light and Power Company is purchased, and the generating capacity in this station is inadequate to carry any appreciable amount of the maximum load of the Edison system.

Q. Is Edison Light and Power Company able to buy more electricity if it needed it than it requires now from this source of wholesale power? A. Their contract provides for their entire requirements, unlimited as to amount.

By Mr. Miller:

Q. Now, Mr. Palmer, leaving the steam generating property for a moment and turning to the facilities exclusively for service to the York Railways Company shown on Sheet 15 of Exhibit No. 18, do you desire to make a further explanation of the basis for excluding the property shown on that sheet from your reproduction cost figures? A. The equipment included in the appraisal of the Edison Light and Power Company property shown on Sheets 6 and 7 of Exhibit 18 as facilities used exclusively for York Railways Company's service appraised on the basis of direct cost at \$84,651, exclusive of overhead.

On the basis of 10 percent annual fixed charges to the Edison Light and Power Company would be \$8,465.10, exclusive of overhead.

Mr. English: May I interrupt the witness, Your Honor, to inquire just what exhibit he is referring to?

The Commissioner: Exhibit 18 Sheets 6 and 7, which are then condensed on Sheet 15, as I understand it.

H. Root Palmer—For Complainant—Direct

Mr. English: Thank you, sir.

Mr. Miller: That is correct.

The Commissioner: 6 and 7 are the detailed sheets and Sheet 15 is a condensation, a total arrived at of \$8,465.10.

The Witness: On the basis of the average of .0078 per KWH for purchased power for the first six months of 1936—

By Mr. Miller:

Q. Is that mills, Mr. Palmer? A. 7.8 mills. The spread between the average purchase price and the price transferred to the York Railways Company of .009 mills would be .0012 mills per KWH hour. To reimburse the Edison Light and Power Company for the carrying charges of \$8,465.10 would require an annual use by the York Railways Company of 7,054,250 KWH.

In addition to these carrying charges the Edison Light and Power Company absorbs the operating and maintenance expense and insurance on this equipment.

By the Commissioner:

Q. On this \$84,000 worth of equipment, is that what you are talking about? A. Yes, sir.

Q. Referred to in Exhibit 18? A. Yes, sir.

With the decreasing use by the York Railways Company from 7,296,434 KWH in 1913 to 4,250,970 KWH in 1935 as shown on Sheet No. 2, the amounts of the losses absorbed by the Edison Light and Power Company are increasing.

Q. Now, Mr. Palmer, will you see whether I understand this matter of \$84,000. This \$84,000 covers the transformers, blowers, switchboard panels, instruments and so on, as I understand it which are included in the property of the Edison Light and Power Company, is that correct, from their statement? A. Yes, sir.

H. Root Palmer—For Complainant—Direct

Q. I also understand that you say that this equipment is used exclusively for the York Railways Company's service, is that correct? A. Yes.

Q. Now, I would like to ask you this question: If Edison Light and Power and York Railways were two entirely separate entities, dealing entirely at arms-length, would this equipment be owned and paid for and assumed by the Railways Company or the Edison Light and Power, which would be required to have it? Would the Electric Company dealing at arms-length with Railways Company supply this equipment for the purpose of delivering to the Railways Company energy, or would the Railways Company be required to install this equipment at its own expense to receive that energy from Edison Light and Power Company? A. It would depend upon the rate. If the seller provided facilities it would be reflected in the rate, if the purchaser provided facilities it would be reflected in the rate at a lower rate.

Q. Then your conclusion that it should be excluded from the Edison Light and Power Company valuation of Edison property is that according to your figures, Edison Light and Power Company was selling the current to be used by York Railways to it at less than it cost it, is that right? A. Yes, sir.

Q. And that is based on your judgment that it should be excluded from the Edison Light and Power Company, is that correct? A. That was the conclusion I used in my exhibits on power supplied the York Railways Company.

Q. I mean, I can understand it on that basis, but I thought it was perhaps a little hazy, at least it was to my mind, and I wanted to be sure on what you based your opinion? A. The power supplied the York Railways Company is metered and delivered at the generating station in York, and at the substations located on the outlying lines of the Railways Company.

The power metered and delivered to the Railways Com-

H. Root Palmer—For Complainant—Direct

pany at the generation station in York is 2300 volts alternating current and after delivery to the Railways Company the Edison Light and Power Company provides, maintains and operates the facilities appraised on the basis of direct costs only at \$84,651 to transform and convert the 2300 volt alternating current of the Railways Company to 600 volt direct current suitable for the operation of its cars.

The power supplied to the Railways Company metered and delivered at its outlying sub-stations is 13,200 volt alternating current and the facilities in these sub-stations to transform and convert this alternating current, which has been delivered to Railways Company, to direct current suitable for operation of its street cars is provided, maintained and operated by the Railways Company.

By Mr. Miller:

Q. Now, do you mean that the transformers located at the York Station are supplied by the York Edison Company and the transformers located at the sub-stations are supplied by the Railways Company? A. The transformers at the sub-stations are provided by the Railways Company in connection with their apparatus used for the Railways service on purchased current at the generating station at 2300 volts. Transformers for reducing a portion of the purchased power by Edison Light and Power Company are provided by the Edison Light and Power Company. The other portion of purchased power is purchased at 2300 volts which requires no transformers.

Q. Now, do you have any further explanation to make on Sheet 1 of Exhibit 19? A. Sheet No. 1 of Exhibit No. 19 shows the cost of the power purchased by Edison Light and Power Company for the years 1931 to 1935, inclusive, with a credit for the amount transferred to the York Railways Company for power and for light and respondent's own use with a net charge for purchased power.

H. Root Palmer—For Complainant—Direct

The result of this adjustment shows a difference of \$1,664.63 between the amount paid by the Edison Light and Power Company for the power transferred to the York Railways Company, a loss to the Edison Light and Power Company of \$1,664.63.

Q. That is for what year? A. For 1931.

The result of this adjustment for 1932 shows a difference of \$3,259.08 between the amount paid by the Edison Light and Power Company for the power transferred to the York Railways Company, a loss to the Edison Light and Power Company.

Q. What was the result for 1933? A. The result of this adjustment for 1933 shows a difference of \$1,357.09 between the amount paid by the Edison Light and Power Company for the power transferred to the York Railways Company, a loss to the Edison Light and Power Company.

Q. Now, you said the difference between the sum paid, and I presume the sum received from the York Railways? A. The amount transferred to York Railways Company.

Q. And for 1934? A. The result of this adjustment for 1934 shows a difference of \$319.22—

The Commissioner: Loss or profit.

The Witness: A loss.

By Mr. Miller:

Q. What was the result for 1935? A. It shows a difference of \$3,528.31.

Q. Loss or profit? A. A gain to the Edison Light and Power Company.

Q. What was the reason for that gain, in your opinion? A. That was the result of a reduction in the average rate for power purchased by the Edison Light and Power Company from the 9.07 mills in 1934 to 8.17 in 1935, as shown on Sheet 2 of that exhibit.

H. Root Palmer—For Complainant—Direct

By the Commissioner:

Q. And the charge to York Railways remains the same as in the previous years? A. Nine mills in that year.

Q. Was that the same as in 1934? A. The transfer of credit was on a different basis for the earlier years.

By Mr. Miller:

Q. Does that gain of \$3,258.31 indicated for 1935, mean that the Edison Light and Power Company made a profit of that amount for that year on the power sold to the York Railways Company? A. It does not.

The Commissioner: What is that, for 1935?

Mr. Miller: Yes.

By the Commissioner:

Q. Well, what did happen?

By Mr. Miller:

Q. Why do you say that, Mr. Palmer? A. That includes no fixed charges on the equipment, facilities supplied and maintained by the Edison Light and Power Company.

Q. In your opinion if the fixed charges had been included would that sum have been reduced or eliminated? A. Been eliminated and a loss substituted:

By the Commissioner:

Q. Well then, according to that same reasoning, under your reasoning over the years 1931, 1932, 1933 and 1934 the loss shown by your figures would be very materially increased, if these same factors were taken into consideration, the figures which you gave would have been much increased, would they not? A. They would have been increased by the amount of fixed charges of \$8,465.10 annually.

H. Root Palmer—For Complainant—Direct

Q. It would have run anywhere from eight to ten thousand dollars a year loss, is that right, roughly? A. Yes sir.

By Mr. Miller:

Q. And would that figure of approximately \$8,000 for fixed charges have applied in 1935? A. Loss or gain—the difference between the purchase price and the selling price.

Q. Then the loss in 1935 as indicated by your adjusted figures, by taking into consideration the \$8,000 maintenances and fixed charges would be approximately \$5,000 loss, is that right? A. Yes sir.

Q. Did you hear the testimony of Mr. McShea at the last hearing that the cost of purchased power to the Edison Light and Power Company for the first six months of 1936 averaged .0078 cents per KWH under the new contract? A. I did.

Q. Would that reduction in the cost of power to the Edison Light and Power Company mean that they would realize a profit on the power sold to the Railways Company? A. It would not.

Q. Why? A. On the basis of an average of 7.8 mills per KWH for purchased power for the first six months of 1936, the spread between the average purchase price and the price of transfer to the York Railways Company of 9 mills, would be 1.2 mills per KWH. To reimburse the Edison Light and Power Company for the carrying charges of \$8,465.10 would require an annual use by the York Railways Company of 7,054,250 KWH. The actual use by the Railways Company for 1935 was 4,250,970 KWH.

Q. Now, in addition to this \$8,465.00, are there other charges which are absorbed by the Edison Light and Power Company in connection with furnishing current to the York Railways? A. The operation and maintenance expense of its equipment in the generating station and the insurance.

Q. Did you give the use by York Railways for 1935 in KWH? A. Yes sir.

H. Root Palmer—For Complainant—Direct

Q. Will you refer to Exhibit 20 and explain your basis of allocation of the operating expenses between the steam generating and electric generating and the transmission groups? A. The allocations as shown are based on a field inspection of the operating conditions and the relation of expenditures to the various accounts for the conditions observed and corresponding to their separate operating companies.

Q. Now, that is in general. Will you please be more particular in the allocation to each and give the basis of the allocation to each group? A. The allocation to the electric generation is based on the segregation of the electric and steam generating property and operations, on the basis that the operating expenses are confined to the turbine operation and auxiliary apparatus, the steam being brought to the turbine room and the electric energy delivered to the switchboard.

The allocation to the transmission system group is based on the segregation of operating expenses as if the steam generation and electric generation were removed and all energy, whether generated at another location or purchased, was brought to the switchboard for control and distribution.

The allocation to the steam generation is based on the segregation of the operating expenses as if the only purpose was for steam heating service independent of any electric generation.

The total operating expenses shown in these exhibits allocated to steam generation are the total operating expenses taken from the respondent's records, and as shown on sheets designated 1931 to 1935, inclusive.

Q. Now, can you give me the percentage basis of your allocations? A. The classification account 350, 40 percent to steam generation, 40 percent to transmission groups and substations, 20 percent to electric generation. Account No.—

Q. Just a minute, Mr. Palmer, you say Account 350. Do you mean the account number in the Commission's Uniform Classification of Accounts? A. Yes, sir.

H. Root Palmer—For Complainant—Direct

Q. Did the company follow that uniform classification in connection with all of the items which you allocated? A. There was more than one classification used, but—

By the Commissioner:

Q. By the company? A. By the company, but they were adjusted to conform to the Commission's Classification.

By Mr. Miller:

Q. Can you give me the numbers of the company accounts which you used in arriving at your figures under each Commission account head? A. I cannot. The Bureau of Accounts has that information.

Q. All right, will you proceed. A. The classification of account 351, boiler labor, is allocated 100 percent to steam generation.

Classification account No. 352, engine labor, has been allocated 60 percent to electric generation and 40 percent to steam generation.

Account No. 353, electric labor, has been allocated 100 percent to transmission group, sub-stations.

Account No. 354, miscellaneous labor, has been allocated 20 percent to electric generation and 80 percent to steam generation.

The classification account No. 358, has been allocated to water, 85 percent steam generation, 10 percent transmission group, sub-stations, and 5 percent electric generation.

Account No. 359, lubricants, has been allocated 60 percent to steam generation, 20 percent to electric generation, and 20 percent to transmission group, sub-stations.

Account No. 362, other power plant expenses, has been allocated 80 percent to steam generation, 10 percent to electric generation and 10 percent to transmission group, sub-stations.

Account No. 363, station expenses, 80 percent transmission group, sub-stations, 20 percent electric generation.

H. Root Palmer—For Complainant—Direct

Account No. 365, maintenance station buildings, have been allocated 10 percent to electric generation, 20 percent to transmission group, sub-stations, and 70 percent steam generation.

Account No. 367, maintenance and boiler plant equipment, has been allocated 100 percent to steam generation.

Account No. 368, maintenance engines, has been allocated 100 percent to steam generation.

Account No. 369, maintenance turbo generators, has been allocated 100 percent electric generation.

Account No. 370, maintenance other generators, has been allocated 100 percent transmission group, sub-stations.

Account No. 371, switchboard and controls, has been allocated 70 percent transmission group, sub-stations, 30 percent electric generation.

Account No. 373, maintenance miscellaneous power plant equipment, has been allocated 10 percent transmission group, sub-stations, 10 percent electric generation, and 80 percent steam generation.

Q. Have you any further explanation you desire to make of the exhibits presented at the last hearing, Mr. Palmer? A. With reference to Exhibit No. 20, it appears, for example, in 1931 the allocated cost of steam generated was \$88,805. For the steam generated at this cost, respondent received from the steam heating company, as shown on Page 1 of this exhibit \$81,709.84. It is, therefore, apparent from an operating viewpoint alone that the revenue received for the sale of steam was not compensatory.

Likewise in 1932, the allocated cost of steam generated was \$89,548.00 and respondent received for the sale of such steam \$88,608.48.

In 1933 it appears that the cost of steam generation was approximately \$1500 less than the money received from the steam heating company, while in 1934 and in 1935 the operating cost alone again exceeded the revenue for the sale of steam.

L. C. Bierman—For Complainant—Direct

Since the primary business of the respondent is the furnishing of electric service and as it appears the revenue received for the sale of steam is not compensatory, the property used for generation of steam has been excluded from the reproduction cost estimate in an effort to include in that estimate only the property used for the furnishing of electric service.

Mr. Miller: Do you desire to cross examine at this time?

Mr. English: I prefer not, if that is agreeable to the Commission, until we have had an opportunity to examine the witness' testimony.

L. C. BIERMAN, a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows on

Direct Examination

By Mr. Miller:

Q. What is your name? A. L. C. Bierman.

Q. By whom are you employed and in what capacity? A. Public Service Commission as head of Electrical Engineering.

Q. What is your technical education? A. I am a graduate of Ohio Northern University in engineering.

Q. In what course? A. Civil engineering.

Q. And since your graduation what has been your experience in engineering work? A. Since my graduation I was employed in the Maintenance and Way Department of the Pennsylvania Railroad from January, 1918 to April, 1918; with the Central Iron and Steel Company from April, 1918 to June, 1918 as Transitman; from June, 1918 to July, 1919 with the Midvale Steel Company at Coatesville as Draftsman and Estimator; from July, 1919 to November, 1919 with the Central Iron and Steel Company at Harrisburg as Field Engineer,

L. C. Bierman—For Complainant—Direct

that is laying out reinforced concrete construction and general steel plant work, and from November, 1919 to April, 1927 with Gannett, Seelye and Fleming, Engineers, Harrisburg, Pennsylvania.

Q. And since 1927? A. Since 1927 I have been with the Public Service Commission.

Q. Now, in what business was Gannett, Seelye and Fleming engaged? A. Gannett, Seelye and Fleming were engaged in the engineering and construction practice, and also they were at the time I was with them interested in the operation of a number of utilities all over the United States.

Q. Did they do appraisal work? A. They did considerable appraisal work.

Q. Were you engaged during that time in any inventory and appraisal work? A. I was engaged during that time on a number of appraisals.

Q. Did those appraisals include appraisals of electric properties? A. They did.

Q. Will you name some of the electric properties you inventoried and appraised? A. Some of the electric properties included the Carlisle Electric Company, Carlisle, Pennsylvania; Solar Electric Company, Brookville, Pennsylvania; Southern Pennsylvania Power Company, Oxford, Pennsylvania; Northern Maryland Power Company, Elkton, Maryland; Ortanna Electric Company, Ortanna, Pennsylvania; Canton Electric Company, Canton, Pennsylvania; Blossburg Electric Company, Blossburg, Pennsylvania; South Carolina Power and Light Company, Kingstree, South Carolina; Tucumcari Light and Power Company, Tucumcari, New Mexico; Buffalo Light and Ice Company, Buffalo, Oklahoma; Yale Municipal Plant, Yale, Oklahoma; Tonkawa Municipal Plant, Tonkawa, Oklahoma; Woodward Municipal Plant, Woodward, Oklahoma; Kinder Municipal Plant, Kinder, Louisiana; --

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The Commissioner: Will counsel for the respondent admit the witness' qualifications as an engineer?

Mr. English: We are satisfied with the experience of the witness. We will not insist on further proof as to that.

Mr. Miller: Well, I see no reason for his reading all the electric plants which he has inventoried and appraised, Mr. Commissioner, but I would like to ask one or two other questions.

The Commissioner: If it serves any useful purpose all right, but I would like to get along as fast as we can this morning.

By Mr. Miller:

Q. Have you been engaged in the construction of any electric facilities? A. I was engaged on the construction of transmission lines from Franklinton to East Berlin; East Berlin to Abbottstown; Canton to Troy; Mansfield to Tioga.

Q. Are they all in Pennsylvania? A. They are all in Pennsylvania.

Q. Have you designed transmission lines? A. I designed transmission lines from St. Genevieve, Missouri to the Central Station of Illinois Central Power Company at Grand Tower, Illinois and have worked up tentative designs for interconnection of plants in Virginia.

9. Have you estimated costs for dams for hydro developments? A. I have. I made tentative studies for hydro developments for the Genessee Valley Power Company, Filmore, New York, and for a number of small developments in Virginia.

Q. Have you had anything to do with inventories and appraisals of the Scranton Electric Company and the Hershey Electric Company? A. I have. In the Scranton Electric Com-

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pany I was responsible for the inventory of sub-stations, distribution system and transmission system.

Q. In the course of your employment by the Commission have you had occasion to make estimates and appraisals in connection with formal and informal cases pending before the Public Service Commission? A. I have in connection with mergers, rates and also many rural lines.

Q. Are you a registered professional engineer in Pennsylvania? A. I am.

Q. Have you examined the inventory and appraisal of Day and Zimmerman of the property of the Edison Electric Company of York? A. I have.

Q. As of June 1, 1934? A. I have.

Q. Are you in agreement with the overheads applied by Day and Zimmerman to their cost figures? A. In my judgment there are certain overheads that are excessive.

Q. Have you prepared an exhibit setting forth the overheads you consider reasonable for property of this character? A. I have prepared such an exhibit.

Summary of reproduction cost estimate as of June 30, 1934, from page 32 of Report No. 3054, Day and Zimmerman, Inc., with deductions from accounts 204-215, inclusive, for property used for steam production, property not used or useful, and property used exclusively for York Railways Company, and with adjustments in allowances for indirect costs, produced and marked Public Service Commission's Exhibit No. 21, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you a sheet marked Exhibit No. 21, and ask you if that is the exhibit showing your overheads that you considered reasonable? A. It is.

Q. Does that show also direct cost? A. It shows the direct

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cost of Day and Zimmerman as shown on Page 32 of their report, with deductions of certain accounts from 204 to 215 as shown in Exhibit 13, Page 16, that is, property excluded from steam production, property not used or useful and property used exclusively for York Railways Company.

Q. In other words, with adjustments as indicated by exhibits which Mr. Palmer analyzed? A. That is right.

Q. And you say Accounts 204 to 215? A. That is right.

Q. Both inclusive? A. Yes, sir.

Q. What is the total—

Mr. English: May I interrupt just a moment. I don't recollect that the Day and Zimmerman appraisal has been offered in evidence.

Mr. Miller: It has not been offered in evidence.

Mr. English: Am I right in that respect?

Mr. Miller: That is right.

Mr. English: Then I object to the witness' testifying with regard to it unless and until it is offered in evidence. He is predicating this exhibit entirely on something that is not before us, and I think that is improper.

Mr. Miller: These figures, however, were taken from the report of Day and Zimmerman. That is where the witness got the figures, and that is all the witness is testifying to. These are the figures in the Day and Zimmerman report.

Mr. English: The testimony of this witness is objected to because it is based upon a criticism of a report which is not before the Commission in this proceeding.

The Commissioner: I don't understand so: I understood this exhibit was simply a reproduction of figures that appear in the Day and Zimmerman report, is that correct?

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Mr. Miller: That is correct, Mr. Commissioner, without any modification except as indicated.

The Commissioner: The interpretation in this manner, as I understand it.

Mr. Miller: Except for accounts 204 to 215 inclusive, as the witness has indicated. In other words, the witness is now testifying as to what appears on the Commission's Exhibit 21, where he got the figures and what adjustments he made.

Mr. English: May I call attention to what it says. It speaks for itself. At the top, "Summary of reproduction cost estimate as of June 30, 1934, from Page 32 of Report No. 3054, Day and Zimmerman, Inc., with deductions from accounts 204 to 215, inclusive," and so forth.

The Commissioner: Who made the deductions?

Mr. English: The witness said he did.

Mr. Miller: Mr. Bierman made the deductions.

The Commissioner: Is it your position, Mr. English, that these figures that purport to show the figures in the Day and Zimmerman report are or may not be accurate.

Mr. English: I don't know. My position is that the best of evidence of what the Day and Zimmerman report shows is the report itself, and until that is before us—

The Commissioner: The Day and Zimmerman report is an official record of this Commission in a previous proceeding, is it not?

Mr. English: Even if that were true, your Honor, it certainly ought to be in here.

The Commissioner: It was in a former proceeding, in a merger proceeding.

Mr. English: That is correct, but nevertheless it ought to be formally in this record before we have evidence in criticism or explanation of it.

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Mr. Miller: I didn't offer Mr. Bierman either to criticize or explain that exhibit.

The Commissioner: Mr. Miller, it seems to me that the point Mr. English raises is certainly technically correct and from a common sense point of view it seems to me it is also correct. If you draw conclusions or make deductions or additions to the report described as the Day and Zimmerman report, that report should be somewhere in this record by reference from the other proceeding or somehow. I don't see any possible objection to that. Is there, as to the Day and Zimmerman report?

Mr. Miller: The Commission has not been able to check the figures in the Day and Zimmerman report, Mr. Commissioner, to determine their accuracy.

The Commissioner: You are using some of the figures in the Day and Zimmerman report in this exhibit?

Mr. Miller: That is true. They have been taken by Mr. Bierman from the Day and Zimmerman report.

The Commissioner: Then why not incorporate the Day and Zimmerman inventory and appraisal in this record by reference, not as an admission by the Commission of it as a whole or any part of it. It speaks for itself as their inventory and appraisal.

Mr. Miller: Commission's Exhibit No. 17, Mr. Commissioner, was a summary of reproduction cost estimate of Day and Zimmerman, and there was no objection made to that.

The Commissioner: I quite understand that, but nevertheless that does not preclude, if it was not made then an objection to this exhibit based on that Day and Zimmerman report. I for the life of me cannot see any objection to including the Day and Zimmerman report in this proceeding by reference. Certainly it does not com-

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mit the Commission or the company either to the figures in the Day and Zimmerman report as a conclusion in this case.


Mr. Miller: I have no objection whatever, Mr. Commissioner to the inclusion of the Day and Zimmerman report in evidence for the purpose of checking the figures shown on Exhibit No. 21 which purports to be taken without adjustment from that report of Day and Zimmerman.

Mr. English: Of course, I have no further comment, because our position is definitely understood by the sitting Commissioner. I am sure if the report is offered we will meet it when it is offered.

The Commissioner: Do you offer it?

Mr. Miller: I don't have it yet, Mr. Commissioner.

The Commissioner: You don't need it. It is in the other record, and you certainly can incorporate it in this record by reference.

Mr. English: And we have a copy of it. 

The Commissioner: Don't you have a copy of your own inventory and appraisal of your own property?

Mr. English: I would be surprised if we didn't.

Mr. Miller: Mr. Commissioner, I will offer for inclusion in this record, for the purposes I have stated, the Day and Zimmerman report, No. 3054 as of June 30, 1934, particularly Page 32.

The Commissioner: That being an inventory and appraisal by Day and Zimmerman only of the property of the Edison Light and Power Company, is that correct, or is it an appraisal of both?

Mr. Miller: It is an appraisal of York Railways and Subsidiary Companies presented to York Railways.

The Commissioner: Well, in any case it includes

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that inventory and appraisal the property of the Edison Light and Power Company, does it not?

Mr. Miller: Yes, sir.

Mr. English: There is no doubt about that, Your Honor.

Mr. Miller: The Commission's testimony will be confined almost entirely to matters appearing on Page 32 of the report, Mr. Commissioner.

Mr. English: We have no objection to the report's being received in evidence for all purposes for which it will have evidential value. We would like to have it understood that it can be offered for any limited purpose. It will have to speak for itself, and be available—

The Commissioner: It will certainly speak for the opinion of Day and Zimmerman.

Mr. English: Exactly.

The Commissioner: And for no other purpose.

Mr. English: Right.

The Commissioner: It is an inventory and appraisal submitted by the company in a previous proceeding before the Commission. It will be admitted to the record for that purpose.

Mr. Miller: I don't care to offer it for general purposes. I will offer Page 32 of the Day and Zimmerman report as described.

Mr. English: As I understand it the entire report has been offered and received.

Mr. Miller: For a limited purpose, as I understood it.

The Commissioner: I don't quite understand, but to my limited intelligence there appears to be a little shadow boxing in this matter. What we are after is facts, at least I think we are, and I cannot see the disadvantage to either side in having available for refer-

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ence, either by the Commission or by the company, an inventory and appraisal which includes an inventory and appraisal of Edison Light and Power Company property submitted by the testimony of witnesses produced by the companies now involved in this proceeding at a previous hearing, by one of their witnesses, a man who was in charge of the appraisal and inventory of the company. Now the mere submission of that appraisal certainly does not bind the Commission to the inclusion stated by Mr. English as to the basis for rates in this proceeding, neither does it the Public Service Commission. I cannot for the life of me understand that.

Mr. Miller: My only objection, Mr. Commissioner, is to offering in evidence in toto and for all purposes a report which was submitted by the respondent in another proceeding, and which we have been unable to check in its details.

The Commissioner: What do you mean by, "for all purposes?" What harm can there possibly be to the Commission's case in including it.

Mr. Miller: I don't know what will occur to the bright minds of the respondents.

The Commissioner: I cannot follow that reasoning. The Commission knows what the picture should be, and the company has its own ideas of that. Certainly if you are drawing conclusions from an exhibit here in part, based on one or any number of pages of that Day and Zimmermann report, I see no possible reason why that report should not be in this record by reference.

Mr. Miller: I have no objection, Mr. Commissioner.

The Commissioner: Let us have all the light there is. We want the facts, and nothing but the facts.

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Mr. English: There is no question about that, Your Honor.

The Commissioner: I don't think there is any concealment intended by Mr. English, I will do him that credit, that there is no clever or covered purpose in having the whole thing introduced, and I myself think it should be. It certainly does commit either side to any part of it in this proceeding as I see it. As I understand it now the objection to comment on these figures of Page 32 as listed here is withdrawn in view of the fact that the Day and Zimmerman report is now included by reference in this record.

Mr. English: Right, Your Honor.

The Commissioner: All right, let us proceed.

Report No. 3054 on York Railways Company and subsidiary companies to York Railways Company, York, Pennsylvania, Day and Zimmerman, Inc., Engineers, letter of transmittal of the report being dated November 19, 1934, and the figures being given as of June 30, 1935, produced, marked and offered by reference, Public Service Commission's Exhibit No. 21A, E. E. M., 11/8/36.

By Mr. Miller:

Q. Now, have you stated what direct costs are shown on Exhibit 21? A. The direct costs shown on Exhibit 21 are \$3,522,618 new and \$3,182,902 new less accrued depreciation.

Q. And where did you obtain those direct cost figures? A. Those direct costs were taken from Page 32 of the Day and Zimmerman report, with adjustments made to the steam generating system property.

Q. Now, are the indirect costs shown on Commission's Exhibit No. 21, the figures used by Day and Zimmerman?

The Commissioner: The block at the bottom of the page.

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The Witness: The item of "Interest during construction," is the same as shown on the Day and Zimmerman report, that is, the percentage applied. The other percentages are different.

By Mr. Miller:

Q. Are the other percentages your own allowance? A. They are my own allowance.

By the Commissioner:

Q. Based on what? A. Based on my experience.

By Mr. Miller:

Q. And what is the total of your allowances shown on Exhibit No. 21? A. They are approximately 18 percent.

Q. Will you state how you arrived at that 18 percent figure. A. I applied preliminary and organization expense at $11\frac{1}{2}$ percent; administration, legal and taxes $11\frac{1}{2}$ percent; engineering and supervision 5 percent, and arrived at a sub-total of \$3,804,427.

By the Commissioner:

Q. What figures did you arrive at? A. A sub-total of \$3,804,427. That includes the direct cost. Also since I applied interest during Construction, 6 percent, and the entire cost up to that point amounted to \$228,266, I arrived at a further sub-total of \$4,032,693 to which I applied cost of financing of 3 percent or \$120,981, or a total of indirect cost \$4,153,674. Now, plus cash working capital, materials and supplies, of \$142,000 or a grand total of \$4,295,674.

By Mr. Miller:

Q. Did you perform corresponding computations with respect to the reproduction cost new less depreciation in the Day and Zimmerman appraisal? A. I did, with the exception of preliminary and organization expenses, I didn't depreciate that

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item. That is shown undepreciated, since I don't believe it should be depreciated.

Q. Of course, the cash and the materials and supplies go through as the same figures? A. That is right.

By the Commissioner:

Q. Then what is the grand total of reproduction cost less accrued depreciation? A. \$3,901,265, including cash working capital.

By Mr. Miller:

Q. What does preliminary and organization expenses cover? A. It covers cost of making preliminary studies and estimates, that is, canvassing the town for the purpose of obtaining data that will show the probable number of customers, making an estimate of probable consumption, construction of a tentative tariff and a study of gross revenue that may be expected annually; tentative design of a system and estimated cost to build the same; the organization of a tentative operating department, together with an estimate of the annual operating expenses, maintenance, depreciation and taxes; constructing a tentative financial structure and preliminary negotiations with bankers for the purpose of financing. In addition money must be provided to cover the incorporation fees, legal charges for the preparation of papers for a charter and recording the same, time and expense of the promoters, advertising matter, and so forth.

Q. Now, the item of depreciation, legal expenses and taxes, what does that item cover? A. It covers the cost of searching real estate titles, examination of contracts, examination of contractor's bond, writing mortgage, bond trustee's fees, recording mortgage, general officers' salaries, clerical help, office rents, telephone, auto-hire, books of account and other miscellaneous expenses and taxes during construction.

Q. You include the item of preparing the application for and securing the charter under preliminary studies and esti-

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mates, do you not, rather than under legal expenses and taxes?
A. Yes.

Q. Do you have any particular reason for putting that in the preliminary study and estimate classification? A. No, except in my judgment I think that is where it should be placed.

By the Commissioner:

Q. It is all there, so it does not make any difference. A. Yes.

By Mr. Miller:

Q. Did you make an allowance for insurance? A. I didn't make an allowance for insurance as this item is usually considered as part of the direct cost, either in the contractor's field expense or in unit costs.

Q. What was the item of engineering and supervision? A. The engineering charge during construction represents cost of consulting and supervisory work of engineering and construction work. This includes the making of surveys and plans. The general design and construction of turbines, condensers, circulating pumps, boilers and stokers; where the power plant is to be located, whether there is sufficient water, kind and general design of station, buildings, stacks and flues, best arrangement for handling coal and ashes and cold storage plan; the most desirable plan of electric transmission and distribution; where the sub-stations should be located; general decisions on types of electrical equipment and other questions of engineering practice.

It will also require the laying out of mechanical and electrical equipment, such as turbines, engines, pumps and so forth. Specifications of all such apparatus must be prepared and the investigation and recommendation of equipment upon bids which are received. It would include the planning of the distribution and transmission systems, which would require

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the determination of electric demands in various parts of the system, location of distribution centers and feeding points, calculations of sizes of all mains and feeders, decisions on underground distribution and the planning of it, the preparation of maps and specifications for all line and underground construction.

Q. Why have you reduced the allowance for this item to 5 percent? A. It is my opinion that the allowance of 5 percent is sufficient, in view of the fact that this allowance is applied to general property and land, which I have usually applied, and also to the fact that there are certain allowances made by Day and Zimmerman in certain structural accounts, and these allowances were 5 percent omissions and contingencies, 7 percent contractor's overhead, 10 per cent contractor's profit, and 5 percent architect's fees, applied to the total, making an overhead item of about 30 percent.

Q. Now, turning to the cost of financing, what do you understand is meant by that item? A. I understand the cost of financing is composed of two parts. First, the mechanical costs, that is, expense incurred in the printing, and engraving, preparing and registering bonds, and some expense in connection with the stock including such items as counsel fees and expenses. Secondly, the fees paid to a broker or banker for consummating the sale of the company's securities.

Q. Have you had a study made of brokerage fees made by public service companies in Pennsylvania according to the Security Amendment in 1935 of the Public Service Company Law, as those brokerage fees are shown by securities application filed with the Commission and other similar data? A. I have.

Q. What was the result of that study? A. I find that out of 202 applications filed between July 1, 1935 and November 15, 1936, 29 related to sales of securities to the general public, either directly by the public service company or through an underwriter or broker, the tentative security issues aggregating over a million dollars—

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Mr. English: Just a moment. This testimony is objected to as not being competent or material to any of the matters before the Commission at this time, and as being wholly outside of the scope of the witness' qualifications to testify.

Mr. Miller: Mr. Commissioner, the witness is giving the basis of his cost of financing allowance.

The Commissioner: I certainly think the witness has a proper right to state on what basis he arrived at an allowance of 3 percent for cost of financing.

Mr. English: Based upon the type of financing he is relying upon I say the testimony so far as he has developed it would disqualify him to express an opinion.

The Commissioner: You mean the experience of the Commission in the last three years, in the cost of financing, as shown by these security applications, is not pertinent to the estimate of the percentage allowed.

Mr. English: That portion, of course, is material.

The Commissioner: That is all I understood he is testifying to.

Mr. English: He has not dealt with comparable companies in what he has said.

The Commissioner: He is only testifying as to how he arrived at this figure of 3 percent.

Mr. Miller: At least part of his examination was on applications filed with the Commission, which was the basis for his allowance.

The Commissioner: I will overrule the objection as to this testimony, since in my opinion it relates solely to the basis on which the witness arrived at the figure of 3 percent for cost of financing. It will be allowed for that purpose.

The Witness: Tentative security issues aggregating over a million dollars, sold directly to the public, and in consequence no commission was paid to a third party.

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Of the other 19 twelve involved \$137,233,000 of securities that were underwritten, which shows a range from $1\frac{1}{2}$ to 3 percent, and the average was 2 percent. One issue was sold to investment bankers and the commission in this case was not registered.

Mr. English: May I suggest, your Honor, it may save time later, if the Commission gives the names of these companies, we certainly are entitled to that, perhaps not now, but on cross examination—give us an opportunity to check it.

Mr. Miller: Surely, we will be glad to.

The Commissioner: That will be furnished.

The Witness: These sold on brokerage numbered 7 involving \$117,530,000 of security, the commission ranged from $\frac{3}{10}$ of a percent to 5 percent with the average being about $2\frac{1}{2}$ percent. The average commission, brokerage and underwriting 2.2 percent, and in my calculation I have allowed $2\frac{1}{2}$ percent, and in addition a mechanical cost of $\frac{1}{2}$ percent, a total of 3 percent.

By Mr. Miller:

Q. Did you in making that allowance take into consideration the size of the security issue? A. Yes, I did, and I might add that where we had information in regard to the mechanical cost the average cost was $\frac{4}{10}$ of a percent.

Q. How did you arrive at the item of \$104,000 for working capital, the cash I mean in the working capital account? A. I took the operating expenses for 1935, less taxes and depreciation and prorated that.

Q. The item of \$38,000 for materials and supplies, what about that? A. That was taken from the balance shown between 1931 and 1935, less coal on hand. The coal I assumed went to the steam heat plant in the proration.

Q. Now, after arriving at your independent estimate on the basis of your experiences, and of the check that you tes-

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tified you made of applications to the Commission, did you make a further check of the estimates against the allowance made by appellate courts of Pennsylvania? A. I did.

Q. Will you state the result of that check? A. In *Chambersburg Gas Company and others vs. the Public Service Commission*, Volume 116, Pa. Superior Court, Page 196, decided February 1, 1935, the court confirmed the Commission's allowance of 3 percent of the cost of property including overhead costs as the cost of financing. The overhead costs included 5 percent for engineering, except land, which was 2 percent; $1\frac{1}{2}$ percent for organization and promotion; $1\frac{1}{2}$ percent for administration, legal expenses and taxes during construction, and 3 percent as interest during construction. In the *Cheltenham and Abington sewage case*, decided July 10, 1936, the Superior Court allowed 12.4 percent of the reproduction cost new of the physical property for preliminary, organization, engineering, administration, superintendence, legal expenses and interest during construction.

Q. Do you have any further explanation on Commission's Exhibit No. 21? A. I think everything has been covered.

By the Commissioner:

Q. Mr. Bierman, to have this clear, these figures on Exhibit 21 are they or are they not the figures that appeared on Day and Zimmerman report in any form? A. The figures in this exhibit are the same as the Day and Zimmerman report—

Q. Both as to the cost new and depreciated? A. On the following accounts, transmission system, distribution system, utilization system and general property.

Q. As to both new and depreciated? A. That is right.

Q. The figures in the first block, steam generating system, there you took the Day and Zimmerman figures and made certain deductions both on new and depreciated? A. That is right.

Q. And the figures in the bottom block on the page, indirect costs, are your own? A. That is correct.

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Q. And not Day and Zimmerman's? A. That is correct.

Q. What is the total of the Day and Zimmerman figures new and less the depreciation as compared with your figures at the bottom of your page? Is there anything comparable to that?

Mr. Miller: There must be.

Mr. English: As I understand it, Your Honor, and if I am wrong, I hope the witness will correct me, there has been deducted from the item of steam generating system what has been referred to here as property exclusively devoted to the production of steam and possibly another deduction for the property exclusively devoted to the production of power for the Railways. Am I right about that?

The Witness: And also property used and useful, there is still a further deduction.

Mr. Miller: In other words, three types of deduction, Mr. English.

The Commissioner: Which is explained at the head of the sheet.

Mr. English: Yes.

Mr. Miller: And the reasons for those deductions were testified to by Mr. Palmer.

By the Commissioner:

Q. Putting it another way, what is the total, the grand total under the Day and Zimmerman report new and less depreciation? A. New \$5,485,524; and less accrued depreciation \$4,908,016.

Q. Then less accrued depreciation it is just about a million dollars more than your figures, is that right? A. That is right.

Mr. English: But they are not comparable figures.

The Commissioner: I understand that. The statement was that they are not comparable figures. In Exhibit 21 we have left out certain items of property that appear on the Day and Zimmerman report.

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Mr. English: We want that very clearly kept in mind.

The Commissioner: Have you any cross examination?

Mr. English: Not for the present, if that is agreeable.

R. A. McSHEA, a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows on

Direct Examination

By Mr. Miller:

Q. Mr. McShea, have you prepared statements of the capital donated to respondent by certain of its customers? A. I have.

Statement of capital donated by customers as of June 30, 1936, produced and marked Public Service Commission's Exhibit No. 22, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you a collection of sheets marked Exhibit No. 22, and ask you if these sheets in this exhibit are the statement to which you refer? A. These sheets are the statements of the capital contributed by customers.

Q. What was the total accumulated donated capital, or what is more commonly known as, "Consumer contributions," as of June 30, 1936? A. \$267,514.68.

Q. Is that amount recorded on the books of the company as consumer contributions? A. There is an amount recorded on the books for donated capital, but not in that amount. The amount recorded on the books as of June 30, 1936, was \$154,859.78.

Q. How did you determine that the capital donated by customers amounted to \$267,514.68? A. During 1934 the Commission and respondent held several conferences relating to the earnings of the respondent. These conferences ended when the

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respondent reduced the rates effective in February, 1935. For the purpose of these negotiations I prepared rate of return calculations from the book value of the property as reflected by the books and in the annual reports. It was called to the Commission's attention by respondent's representatives that the books did not reflect the cost as value of many items of property owned by the respondent, but paid for by certain customers over a period of years. In support of this statement the respondent submitted a schedule, consisting of several sheets, and entitled, "Lines Financed by the Customers and Built by Contractors," dated January 18, 1934, as of October 31, 1933. A copy of this schedule is included in our Exhibit No. 22 as Sheets 2 to 10 inclusive.

Q. What was the respondent's estimate for lines financed by the customers and built by contractors as of October 31, 1933? A. \$231,374.84.

Q. Where is that amount shown on Exhibit No. 22? A. On Sheet 2, Line 10, and also on Sheet 1 at the total line, 7.

By the Commissioner:

Q. What do you mean on that page by the setup you have there, the first block, the figures on contributions? Contributions made by whom, the consumers? A. That amount as I understand it represents cost to the customers for lines built and property constructed to serve those customers.

Q. And paid for by the customers? A. And paid for by the customers.

Q. Then you have the second amount which you deduct from the \$230,000? A. That is right.

Q. What does that mean, "Private?" A. That means that property to the extent of \$19,423.69, that is the total of property that was retained by the customers and not turned over to the company.

Q. And then you have the heading, "Turned over to company," what do you mean by that? The customer said to the

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company: "I turn over to you the lines that I built," or did the company just assume that they were their lines? A. The customers turned those lines over.

Q. Now, how did they turn them over? Or did the company just assume them? A. I believe they actually deeded them over. I believe that is correct.

Q. All right, they actually deeded them over. \$231,000 worth of property paid for by the customers was deeded over or turned over to the company, is that right? A. That is right.

Q. Now, does that \$231,000 appear anywhere on their set-up as part of their structures, as in their property on which they are entitled to earn a return? A. You mean does that property appear in the Day and Zimmerman appraisal for instance?

Q. Yes. A. I believe so. At least we were told that by certain members of the organization of the company while in York.

Q. What have you done with this \$231,000 the calculations? A. You mean rate calculations?

Q. Yes. A. I have not done anything in this case.

Mr. English: I take it, however, that the witness inferentially suggests that the Commission do something with it.

The Witness: I have done many things with it informally.

By the Commissioner:

Q. What I am trying to get at is, to state it plainly: In your opinion I take it your thought is that the company should not be allowed to earn a return on property which has been paid for by the customer? A. That is right.

Q. Because it was the consumer who paid for the property, and he would be paying a return to the company on property which he had paid for himself? A. That is right.

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By Mr. Miller:

Q. Now, among other things that you did informally with this \$231,000, Mr. McShea, did you bring it down to date? A. Well, speaking formally now, I brought it down to date. I brought it down to June 30, 1936.

By the Commissioner:

Q. And is that shown on Exhibit No. 22? A. On Sheet No. 1 of Exhibit No. 22 is a summary of the different kinds of items making up the total donated capital of \$267,514.68.

The first item is the company's statement of \$231,374.84 as of October 31, 1933.

The second item represents the cost of lines financed by customers and donated to respondent from October 31, 1933 to June 30, 1936, in the total amount of \$3,080.27. The cost to the donors and other information is shown on Sheet 11 of Exhibit 22.

By Mr. Miller:

Q. I see on Sheet 2 of Exhibit 22 that ownership of some lines was retained by the customers as of October 31, 1933. Have any of these lines since been deeded over to the respondent? A. Yes, the third item on the summary sheet, amounting to \$4,593.00, which represents the cost of these lines financed by customers up to October 31, 1933, the titles to which were originally retained by the customers but which were turned over to the respondent after October 31, 1933.

Q. What is represented by the fourth item on the first page of the exhibit in the amount of \$1,896.90? A. In making our check, our field check of the statement originally submitted by the company as of October 31, 1933, we found three items which we deal with, inadvertently omitted by the respondent in preparing this schedule.

Q. Are those listed in detail in the exhibit? A. They are detailed on Page 13 of Exhibit 22.

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Q. What does item No. 5 represent? A. This item which amounts to \$22,578.46 represents items of donated capital as recorded on the books, but not included in any of the preceding items, that is, items 1 to 5 on Sheet 1 of Exhibit 22. The details of these items are shown on Sheet 14.

Q. What does the sixth item cover? A. This item which amounts to \$3,991.21 represents the amount of capital donated by customers and recorded on the books, but not as donated capital. Out of the total of \$3,991.21 the sum of \$1,382.79 was credited to fixed capital, the remainder being credited to miscellaneous income accounts.

Q. Have you prepared an estimate of the original cost of the respondent company? A. I have.

Q. Have you reduced that estimate to statement form? A. I have.

Statement of estimated original cost of property as of June 30, 1936, produced and marked Public Service Commission's Exhibit No. 23, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you Commission's Exhibit No. 23, and ask you if that is the statement to which you refer? A. It is.

Q. What does this exhibit show as to the estimated original cost of the property as of June 30, 1936?

Mr. English: Just a moment. I think we ought to have something more definite as to the circumstances under which and by whom the exhibit was prepared. It is rather comprehensive.

By Mr. Miller:

Q. Mr. McShea, was this exhibit prepared under your personal direction? A. Yes.

Q. Did you direct the preparation of the exhibit and the manner in which the books were examined to procure the figures and the manner in which the exhibit was made up? A.

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Well, I directed all of the field work down at the offices of the company; all the work that was done for the purpose of preparing such an exhibit as this. I was in close touch with the work as it progressed, and when the field work was finished I personally prepared this sheet which is now being identified as an exhibit.

Q. Then do I understand that from data obtained from the books of the company and analysis by you, you personally prepared this exhibit? A. I will say yes to that with one qualification, that all of the information used in preparing this exhibit did not come from the books.

By the Commissioner:

Q. Where did it come from? A. We went over all of the books that were available in the company's office in York. We had books for two of the largest constituent companies giving electric service in York, that are now part of the Edison Light and Power Company. Those two companies were the Edison Electric Company, which dates back to 1886, the other company being the Merchants Electric Light and Power Company, which operated from 1900 until 1915. Now, there were three other companies, the Peoples Electric Light Company of York, for which we had no books at all, except for a very short period I think in 1898. Those books were of no help at all. The Westinghouse Electric Light and Power Company operated from 1893 until the property was sold to Edison Electric Company in 1908, and we had no books for that company. The Red Lion Electric Light Company, which operated from 1891 to 1905, also left no books.

By the Commissioner:

Q. What do you mean they left no books? A. Well, we found none. The company could not produce any books for that company.

Q. Where did you get the figures for these companies that appear here? A. We examined the tax reports that are filed

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with what is now called the Pennsylvania Department of Revenue, and we did find some information on those capital stock reports, and where we could not get information on these small companies from books we attempted to fill in the gaps from the tax reports.

Q. Those were the two sources from which you got your information for this report? A. That is right, except that the Peoples Electric Light Company tax reports gave very little information, and the question came up as to the property. I located the date of incorporation, or the date on which letters patent were received by that company, and I testified at the last hearing that the letters patent were received in 1891, but we found by reference to the tax reports that the company apparently had been operating as far back as 1886. So then we went to the office of the Secretary of the Commonwealth and found the letters patent were originally issued May 4, 1896, and the new letters patent were issued in 1891, when the company accepted the general incorporation act of 1874 and the amendment of some date in 1889. There is one other thing, in looking up the application for letters patent in the office of the Secretary of the Commonwealth, there was a statement—

Q. As to this Peoples Electric Company? A. As to the Peoples. There was a statement in there by the parties that made the application, that the value of the property at that time was \$18,000, and I used that \$18,000 as a starting point for the Peoples Company. They are the three sources from which I received information for the preparation of this exhibit.

By Mr. English:

Q. Was any property omitted in the preparation of this calculation, may I inquire? A. No, there was nothing omitted. I have a reconciliation of the difference between my original cost figure and the book value on Page 2 of this exhibit.

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By Mr. Miller:

Q. Mr. McShea, does the figure of \$4,382,647.08 reflect just the cost of property paid for by respondent, or does it also include the cost of property paid for and donated by certain consumers and donated to the respondent? A. It reflects the cost of all property paid for by the respondent and in addition certain property paid for by customers and donated to respondent.

Q. What is the extent of the donated property? A. On June 30, 1936 the respondent's books show donated property in the amount of \$154,859.78 as a credit to reserve for renewals and replacements, and a charge to fixed capital.

Q. Was any property donated by customers and recorded in a different manner? A. Yes. Donations aggregating \$28,659.92 were received from customers, and credited by the respondent as follows:

\$24,235.49 to fixed capital; \$1,780.93 to jobbing work revenue, and \$2,643.50 to various other accounts.

Of the \$24,235.49, the sum of \$14,917.70 was subsequently charged to fixed capital and credited to reserves for renewals and replacements as donated capital, thus leaving \$9,317.79 as the amount still standing as a credit to fixed capital.

Q. What is your estimate of the original cost of the property paid for by the respondent or its predecessors?

Mr. English: We object to that for the reason that the witness is not qualified to express an opinion as to the estimated original cost of the property. As I understand it he has through his associates caused an examination of the books of the company to be made, and also an examination of certain tax reports filed annually with the Commonwealth. There could be no objection, whatever these figures are, for any proper use that may be made of them, but when an accountant undertakes to

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estimate and fill in gaps as to what certain property may have cost, I submit that he is going far afield.

The Commissioner: What gaps are you filling?

Mr. English: He says he is filling in some. I don't know what, but I do think we ought to find out before he is allowed to proceed to specify as to what that "some" is.

The Commissioner: Let us find out what gaps there are.

Mr. Miller: His qualifications were admitted, Mr. Commissioner.

Mr. English: As an accountant, yes.

Mr. Miller: No, they were generally admitted to testify as to the result of his study of the books and estimates made by him based upon those studies.

The Commissioner: The point right now, as I understand, that Mr. English makes, if there are gaps to fill in in addition to the figures taken from the books, from the tax reports, and from the Secretary of the Commonwealth's office, Mr. English would like to know what gaps those were that were filled in.

Mr. Miller: We have no objection to that whatever.

The Commissioner: I think it should be stated.

Mr. English: How much estimating this witness did.

The Commissioner: Beyond the point described, from the books, reports and so forth.

Mr. English: Yes, Your Honor.

Mr. Miller: I think that could be developed in cross examination.

Mr. English: He has put into the record these figures which necessarily seem to me from his statement must include some cost or estimate of what he has done in regard to the original cost of certain elements of property.

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The Commissioner: I think it is entirely proper that Mr. McShea should state at this time what filling in he did beyond the figures he described as gathered from these three sources, the books, the tax reports and from the Secretary of the Commonwealth's office, if any.

Mr. Miller: Do you want all of the detailed figures at this time?

Mr. English: Absolutely. I don't mean to interfere with the orderly manner in which he wants to conduct his case.

The Commissioner: For example, if a figure is broken down into 100 items of \$5.00 each, you don't want each single item, you want that figure and where it is gotten from.

Mr. English: We want to do it in the most sensible way. We want an opportunity of examining these figures. We may not insist on getting them all into the record, but we would like to know what they are.

The Commissioner: And where they were gotten?

Mr. English: Absolutely.

The Witness: Will it answer for Edison Electric, and Merchants Electric Light, Heat and Power Company, if I say I received those figures from the books of these two companies?

By the Commissioner:

Q. Those were not interpretations or deductions and additions on your part? Those figures are the figures on the books? A. They are figures on the books, but I made adjustments which appear—

The Commissioner: No adjustments made as to those appearing and as described in detail on the second page of this exhibit?

The Witness: That is right.

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Mr. English: Edison Electric Light Company and Merchants Light, Heat and Power Company.

The Witness: That is right, in column "h".

Take column "d", Edison Electric Light Company, those figures came from the books.

The company in column "f", York and Windsor Electric Light Company, those figures didn't come from the books. That company is in the same category as the three I mentioned awhile ago.

By Mr. Miller:

Q. Where did the figures for the York and Windsor Electric Light Company come from, Mr. McShea? A. I thought I would take these up in order after I did state what I did get from the books.

The Edison Light and Power Company, the first company organized in 1913, column "g", those figures came from the books.

Merchants Electric Light, Heat and Power Company, column "h", they came from the books.

Edison Light and Power Company, the present respondent, column "i", those figures came from the books.

Taking up first the Peoples Electric Light Company of York, I think I have already stated where the \$18,000 came from, is that right? Do you want more? Between the time when the Peoples Electric Light Company was organized and according to the application, the property had a value of \$18,000. At the time when the property was sold to Edison Light and Power Company in 1894 there were no books, but the negotiations showed the cost of the property. In our examination of the Edison Light and Power Company we found a statement in the minutes of that company dated April 11, 1894, which contained a statement or balance sheet dated April 11, 1894, which gave the book value of the property on that date at \$62,582.48.

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By Mr. English:

Q. Which company is that? A. That is the Peoples.

The Commissioner: The first column.

By Mr. Miller:

Q. That appeared on the books of the predecessor of the Edison Light and Power Company, did it, Mr. McShea? A. No. No, that figure appeared as a statement in the minutes of the Edison Light and Power Company.

Q. Go ahead. A. I took this figure, \$62,582.48, subtracted from it the \$18,000, which I used as a starting point on May 4, 1896, and attempted to account for the difference of \$44,582.48. In the Department of Revenue we examined the books and reports of the Peoples Electric Light Company of York, and those figures and reports contained practically nothing with respect to the cost of the property. However, they did show the amount of the authorized capital stock in each year from 1886 to 1893, and the amount of the paid-in capital stock in each year during the same period. We found that between 1886 and 1887 there was an increase in the paid-in capital stock of \$8,275. I used that figure as the cost of property installed during 1887 for the best estimate I could get at that time.

In 1888 there was no change in the capital stock of the company, either authorized or paid in, so I showed no additions for 1888.

In 1889 the paid-in capital stock was increased from \$25,000 to \$50,000, an increase of \$25,000, which I show as the cost of property in 1889.

The capital stock report for 1893 showed the item of betterments in the amount of \$3,624.56. Taking all those items together, starting with the \$18,000, the \$8,275.00 in 1887, \$25,000 in 1889 and the \$3,624.56 in 1893, I was still short \$7,682.92, which I divided three ways, and applied from 1890, that is one-third in 1890, one-third in 1891 and one-third in 1892.

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Mr. English: As I understand the witness has taken the increase from time to time in the authorized capital stock of the corporation and recorded such increase as reflecting his estimate of the original cost of the physical property. If that is to be a precedent we would be very happy to avail ourselves of it in other directions.

The Witness: Mr. Commissioner, I don't say authorized, I say increase in paid-in capital stock.

By the Commissioner:

Q. What you were doing I understand, Mr. McShea, was arriving at some reconciliation figures which would bring you out to the amount recorded on the Edison Light and Power Company books later on at \$62,582.48, is that right? A. I attempted to come to the figures as shown for the cost of the property in the balance sheet contained in the Edison Light and Power Company minutes.

Q. Yes. A. As a matter of fact the price paid by the Edison Light and Power Company for that company was somewhat in excess of \$62,000. The excess being in some small amount which appears on Sheet 2.

Mr. English: I don't wish to be overly critical, and I have no objection to that explanation. What I do object to is calling the result of that investigation an estimate of the original cost of anything.

Mr. Miller: We are presenting this, Mr. English, since the Act requires that the Commission consider the original cost of property in a rate case if original cost can be arrived at, and we are presenting this estimate as the result of our best estimate to arrive at the original cost of the property.

The Commissioner: I understood that this witness was explaining at my own suggestion, after Mr. English raised the point, as to where he got any figures that were

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not described in this general picture before with respect to the Peoples Electric Light and Power Company and other companies.

The Witness: I might mention that during all this time that the Peoples Electric Light Company was in existence I could find no evidence of bonds or other indebtedness outstanding.

Mr. English: The point I make, Your Honor, and I want to emphasize it, is that inadvertently, of course, they are calling these figures by their wrong names. This is not an estimate of the original cost of property. It would be entirely competent to say what the increases were from time to time in the capital stock of any of these corporations, but let us call it by its right name.

The Commissioner: I think, Mr. English, we ought to finish what was asked for in response to your own question, that is, where did he get the figures as to the companies which did not meet the picture. Let us finish that first. Let us follow my suggestion, and let us proceed in answer to the suggestion I made on the point raised by Mr. English. Now, we have gotten to the point where we have arrived at the figures for the Peoples Electric Light and Power Company.

By Mr. Miller:

Q. Will you give the same information as to the Westinghouse Electric Light Heat and Power Company? A. I also reviewed the capital stock reports of the Westinghouse Light Heat and Power Company and found in the reports from year to year conflicting statements of the cost of the property, and felt that since there were no book calculations from year to year, for instance, the amount of property in 1896 was greatly below the figure for the cost of the property in 1894, that those figures could not be relied upon to give a fair indication of the actual plant costs.

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The capital stock tax reports also gave considerable information concerning the liabilities of the company and the capital stock. There were no bonds or funded debt, for instance, from 1892 until 1908. The bills and accounts payable were very small—well, there was \$5,200 in 1893-4 and \$1,000 in 1896 and after that nothing is listed for bills and accounts payable.

In 1893 there were other liabilities of \$11,364.94, and in 1894 that amounted to \$12,684.31. The account for 1895 contained no information on that. In 1896, and thereafter, their liabilities were negligible. Since there were no bonds outstanding for this company, no bonds had ever been issued, I assumed that all of the paid-in capital stock in this case also was invested in the plant, and for my first figure in column "c" Exhibit 23 I used the paid-in capital as it appeared in the capital stock tax report as \$24,465. ♦

Now, in 1894 there was an increase of \$965.

In 1895 there was a decrease of \$320, so I made no change.

In 1896 there was an increase of \$290; in 1897 an increase of \$740; in 1898 there was an increase of \$5, and from then on until 1906 paid-in capital remained at \$26,465.

In 1898 the capital stock tax report showed betterments during that year in the amount of \$110.98, so I used that figure as being the cost of additions in that period.

During the period from July 1, 1899 to December 31, 1901 this property was recorded on the books of the York Light Heat and Power Company, and from that source we received or ascertained the cost of property installed for the Westinghouse Company in 1900-1901.

The books of the York Light Heat and Power Company show additions between July 1, 1899 to June 1, 1900 in the amount of \$3,277.33.

For the period from July 1, 1900 to December 31, 1901 the net additions for the Westinghouse Company appear on the

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books of the York Light Heat and Power Company to have been \$2,533.53.

The credit figure of \$117.06 in 1903 came from the Westinghouse Company's books—

By Mr. English:

Q. Why is that in red ink? Because it was a deduction from retirements exceeding the cost of additions?

By Mr. Miller:

Q. Do the items marked in red ink, Mr. McShea, appear in the same amount, or included in the amount appearing in blue ink to the right of the red ink figures? A. I understand Mr. English was referring to the item opposite Line 19, \$117.06.

Mr. English: Right.

By Mr. Miller:

Q. That is taken into consideration in the item immediately to the right of the \$117 item on the same line, \$22,288.67, is it not? A. No, it does not have anything to do with that figure.

The Commissioner: The comparable figure is over toward the right, half way across the page, where the Westinghouse figures are all brought into totals, that is where they appear.

Mr. English: That would be the last column?

The Commissioner: Just beyond the middle of the page.

By Mr. Miller:

Q. The \$117.06 figure is a retirement, is it not, Mr. McShea? A. I assume it is a retirement which exceeds the additions that year.

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By the Commissioner:

Q. You see the figure before that, \$32,331.00, the next figure on the same line as the red figure is \$32,214.78? A. That is right.

By Mr. Miller:

Q. And then down on Line 26^o the figure \$32,214.78 is carried over into the Edison Light and Power Company books as a close-out figure? A. That is right, that is the day on which the Westinghouse property was sold to the Edison Electric Light Company.

Q. Now, Mr. McShea, in connection with these first two properties, from what source could the Peoples Electric Light Company of York and the Westinghouse Electric Light Heat and Power Company have obtained funds to use in the purchase of property? A. They could have obtained funds from the sale of capital stock, the sale of bonds or the borrowing of money.

Q. Could they also have obtained funds from earnings? A. Yes.

By the Commissioner:

Q. If they had them? A. If they had them, certainly.

By Mr. Miller:

Q. Have your studies revealed whether or not there were any surplus earnings of those companies from which property could have been purchased?

Mr. English: That is objected to. What we are interested in is what was done and not what might have been done.

By Mr. Miller:

Q. All right, Mr. McShea, what did they get the money from?

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Mr. English: If the books show.

The Commissioner: If you know.

The Witness: As nearly as I can determine from the tax reports the money was received from capital stock issued. There may have been some added to that, some available funds added to that from the earnings in the early days. Of course, they didn't all earn right from the beginning.

By the Commissioner:

Q. Of course, you don't know that. A. I examined the earnings of the following companies also, and have got an exhibit to show what that amounted to.

Q. Now, we have got one other company, as I understand it, that don't appear from the books, and that is the Red Lion, is that right? A. Yes sir.

The Commissioner declared a recess until 1:30 o'clock
P. M.

AFTER RECESS

R. A. McSHEA, recalled.

Direct Examination

By Mr. Miller:

Q. Before you proceed, will you state what the minute books and the tax reports and the other data which you examined show as to the sources from which money for plant construction was received by the Peoples Electric Light Company of York and the Westinghouse Electric Light Heat and Power Company? A. The balance sheet which I previously referred to, which was dated April 16, 1894 showed assets consisting of machinery and construction in the total amount of \$62,582.48.

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the liabilities shown on this balance sheet consisted of capital stock in the amount of \$50,000, and undivided profits in the amount of \$12,582.48. From this balance sheet and from the tax reports and from records that I examined relating to the Peoples Company I believe that all the money used in constructing property by that company came from the proceeds of the issuance of capital stock and the undivided earnings.

Q. Have you arrived at a conclusion as to the source of the money for purchase of the property of the Westinghouse Electric Light Heat & Power Company? A. Yes sir.

Q. Will you state that conclusion and the basis for it? A. In 1908 the last balance sheet filed with the State Department now known as the Pennsylvania Department of Revenue, there was capital stock outstanding in the amount of \$26,345.00, all being paid in. There was no funded debt at that date or at any time prior to 1908. There were no bills and accounts payable outstanding in 1908. The last report showing a liability for bills and accounts payable was in 1896 when \$1,000 was the amount shown. From this information I concluded that the property of the Westinghouse Company was built out of proceeds from the issuance of capital stock and undivided profits.

Q. Will you proceed with your general description? A. Going on next to the Red Lion Electric Light Company, and giving the source of the information shown by column "e" on Exhibit 23, all of the information shown in that column, which started with \$950.00 in the year 1891, next showing \$55 in 1892, next showing \$2,645 in 1896, next showing \$450 in 1897, next showing \$7,350 in 1902, and last showing \$200 in 1905, all came from the capital stock tax reports filed by the company. There were no books available for examination during any of the period for this company. The capital stock tax reports did not contain a great deal of information, but from the information that was given I came to the same conclusion

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with respect to the Red Lion Company as to the source of the funds, with which the property was constructed.

Mr. English: I object to that, and move the answer be stricken out, and ask that the witness produce the evidence from which he says he drew a conclusion so that we may draw ours.

The Commissioner: You mean the capital stock reports?

Mr. English: Yes sir. He says that the capital stock reports in this case did not give him much information, but from some other source he does not name or indicate he got something from which he drew this conclusion.

By the Commissioner:

Q. Where did you get your information other than the capital stock reports? A. I did find from the capital stock tax reports of the Red Lion Company that they had no bonds outstanding in 1904, the last year for which they filed a capital stock tax report, and from the tax reports I was able to determine that there were no bonds outstanding—determined 95 percent anyhow, no bonds outstanding from the beginning of the organization until 1905.

Q. Does that total item of \$11,650 appear anywhere in the books of the Edison Electric Light Company? On the sheet just before that it is translated as \$11,450? A. By the balance sheet shown on the books of the York and Windsor Company, following the merger of April 1, 1905 the \$11,450 was dropped and the \$11,650 substituted. Now, that was done for the reason that the York and Windsor Company was formed by merger and consolidation of the four companies, the Red Lion Company and three non-operating companies, so that the York and Windsor was started with the property of the Red Lion Company, except for what organization ex-

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penses might attach to the other three. That is the reason I started with the \$11,650 in the case of the York and Windsor. Now, that \$11,650 does not appear on the books of the York and Windsor or the Edison Electric Light Company. That is the answer to your question.

The Commissioner: Is it your position, Mr. English, that you want the capital stock reports produced in this case?

Mr. English: Not necessarily, no, but I want the source indicated before he is allowed to testify.

The Commissioner: He has stated them now, namely, that they are only the capital stock reports.

Mr. English: As I understood him, Your Honor, he said with regard to the Red Lion Company the capital stock reports gave him no information aside from the fact that there were no bonds outstanding as appearing by some of these reports. That does not justify the statement that the property was built up out of capital stock proceeds and earnings. There is nothing in that source of information to justify that opinion, as I see it.

By Mr. Miller:

Q. Have you stated all the information derived by you, Mr. McShea, was from the capital stock reports? Are these figures under the Red Lion Electric Light Company all figures taken directly without adjustment from those reports? A. That is correct, for all periods except 1905 where \$200 is shown. I don't think we had the tax report for that year.

Q. Where did you get the \$200 figure? A. Wait till I think where that came from.

The Commissioner: It is so insignificant that I don't think it is worth pursuing. Are you attempting to reconcile the figure of \$11,650 or what?

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The Witness: Well, I took \$11,450 of it from the capital stock tax reports. Now, the \$200 came from some place else.

By Mr. English:

Q. Have you examined the tax reports for the years where blanks are shown here? A. Oh, yes, it might take a little time to find that.

The Commissioner: Can we produce that at some later time?

By the Commissioner:

Q. What about these blanks in the years which you show blank, in those years the capital stock reports I take it showed no change over the year before? A. That is right.

By Mr. Miller:

Q. Mr. McShea, will you state why your examination of this data led you to the conclusion that the Red Lion Electric Light Company had financed its plant construction by means of stock issues and earnings.

Mr. English: That is objected to.

Mr. Miller: That is just what you wanted to know.

Mr. English.

Mr. English: You are asking for an expression of opinion this witness is not qualified to give. There is no objection to his giving all the information he can give with regard to this matter, but we ought to have the information itself and not his opinion in regard to it.

Mr. Miller: This is the information itself which he derived from the tax returns of the corporation.

Mr. English: The point is, Your Honor, the information must speak for itself, and we can all draw our own conclusions as to what it may or may not mean.

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The Commissioner: Do you object to this witness drawing a conclusion as to what it means?

Mr. English: Yes, I do, from this information. It is not sufficient to justify him in the proper drawing of a conclusion, because these figures, as I understand it, merely represent paid-in capital stock during these years, and there is no relation, so far as the evidence has yet developed between it and the estimated original cost of the Red Lion property.

The Commissioner: Do you take that position with reference to the others, the Peoples and the Westinghouse?

Mr. English: Yes, surely.

Mr. Miller: I think certainly, Mr. Commissioner, the witness can give the basis of the opinion which he has expressed on the record.

The Commissioner: It seems so to me, as being his own opinion. It does not become fact, this opinion that he expresses, surely. You have a right to controvert that if you can. I will overrule the objection as to the witness stating an opinion as to what this figure represents, and note an exception for the respondent.

Mr. Miller: That was not my question. I asked Mr. McShea why he said that the Red Lion Electric Light Company had in his opinion financed its property construction in the same manner as he had testified that the Peoples Electric Light Company and the Westinghouse Electric Light Company had.

The Commissioner: That amount to the same thing put in another way.

In other words, Mr. McShea puts down a figure of \$11,650 on this statement, estimated original cost for this company.

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By the Commissioner:

Q. Isn't that so? That is your figure for the original cost of this company? A. That is right.

Q. Now, I ask you to proceed and state what in your opinion that represents? A. Of course, basically that is the amount of paid-in capital stock of the Red Lion Electric Light Company. Now, in the last tax report that we examined for the year 1904 the form required that the various security issues of the company be listed, and the capital stock was shown at \$14,450. That was in 1904, and space was there to show the indebtedness not only for 1904, but for all prior years, and it didn't appear that the company ever had bonds or other substantial debt outstanding, and for that reason I concluded to use the \$11,650 as the original cost of the property, feeling that the money must have come from the issuance of stock with which to build the property.

By Mr. Miller:

Q. Did you say that the tax return of 1904 showed \$11,450?

A. Yes.

By the Commissioner:

Q. 450? A. 1904, it was 450—\$11,450.

By Mr. Miller:

Q. Will you proceed with the York and Windsor Companies? A. Since the York and Windsor Electric Company was formed by merger of the Red Lion Electric Company and three non-operating companies it was evident that it began business in 1905 with the property of the Red Lion Electric Light Company. For that reason I took as the opening original cost for York and Windsor the sum of \$11,650, which I had developed for the Red Lion Electric Light Company. We were unable to find books of the York and Windsor Company for

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a period of years. No books being available prior to October 1st, 1912. There again we were of necessity compelled to rely upon the capital stock tax returns on file with the Pennsylvania Department of Revenue.

Q. What did you find upon the examination of those tax reports? A. The tax reports for 1905 and 1906 contained no information of the cost or value on the property.

By the Commissioner:

Q. 1906 didn't either? A. That is right.

Q. Where did you get the figure of \$60,000 in 1906? A. That is the total amount of some bonds issued in 1906. Bonds were issued by the company in 1906 in the amount of \$60,000.

By Mr. Miller:

Q. From what source did you obtain the information as to the bond issue? A. The York and Windsor Electric Light Company was merged with the Edison Electric Light Company and fourteen non-operating companies in 1913. In examining the details of that transaction we learned that \$60,000 of bonds were issued by the York and Windsor Company in 1906.

Q. Proceed, Mr. McShea. A. According to the tax reports from 1907 to 1913 the capital stock authorized amounted to \$30,000 during the entire period. The space provided for the amount of the paid-in capital stock tax was blank from 1906 to 1911 inclusive. In 1913 the amount of paid-in capital stock is shown at \$30,000. In 1907 the assets are shown as value of property in the amount of \$30,000. \$30,000 was again used in 1908. In the report for 1909 the cost of Red Lion was shown at \$20,000, the cost of equipment at \$15,000, and the real estate and buildings at \$2,000. In 1910 the cost of Red Lion was shown at \$7,000, the cost of equipment at \$7,500, the cost of real estate and buildings at \$1500. Now, in 1909 the property values

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as shown by the capital stock reports changed or decreased from \$37,000 in 1909 to \$20,000 in total in 1910. While personally, I don't think there was a decrease in the cost or the value of the property between 1909 and 1910, so in order to play safe I used the \$11,650 for the entire bond issue in 1906 at \$60,000 and started out with those two figures.

By the Commissioner:

Q. And for a period of five years you used \$71,650? A. Beg pardon.

Q. For six years thereafter you came to a total of \$71,650?

A. That is right.

Mr. English: As I understand the witness' theory when he didn't like the figures he rejected them?

The Witness: I rejected those figures in favor of the company.

Mr. English: I don't mean to be so persistent, but I do say this witness ought to give us the information that he has.

Mr. Miller: He has given you the information that he has.

Mr. English: He should have included it in this report.

The Commissioner: He has testified as to how it got there.

Mr. English: I think we will be entitled to have the tax reports themselves, and perhaps we ought to have them. Now, as long as certain figures are eliminated from this—exhibit—

The Commissioner: I don't know that we can produce the tax reports filed with the Department of Revenue.

Mr. English: Perhaps we have copies.

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The Commissioner: They are available to you.

Mr. English: Oh, yes, surely.

(Discussion at the instruction of the Commissioner off the record.)

By Mr. Miller:

Q. Now, Mr. McShea, just in that connection did you in your final figures reduce any values as taken from the books of these various companies? A. Did I what?

Q. Did you reduce, for example, these figures are frequently carried, the red figures are frequently carried over into the blue figures. Are those blue figures which correspond to the red figures amounts appearing on the books of these various companies?

The Commissioner: They were in the books of the companies.

Mr. English: He said there were no books.

(Remarks by Mr. Miller at his request off the record.)

Mr. Miller: I will withdraw the question.

By Mr. Miller:

Q. Proceed, Mr. McShea. A. In the capital stock tax reports of the York and Windsor Company from 1907 to 1913, a statement of the expenditures of the company was shown for each year. In the space provided to show the amount expended for property nothing was shown until the year 1911, when the expenditures for betterments are shown to have amounted to \$1501.76, and that is the item appearing opposite 1911 on Exhibit 23. The amount shown opposite 1912 is \$6,323.24 and was determined in this manner. The capital stock tax report for the year 1912 shows an expenditure for betterments in the amount of \$1,466.69. Passing that amount for the moment

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until I finish with 1913—the amount of \$440.51 was obtained from the books of the York and Windsor Company. Now, in the merger I think June 1st, 1931, when the York and Windsor Company, the Edison Electric Light Company and fourteen non-operating companies were merged to form the first Edison Light and Power Company, the amount shown on the books of the Edison Light and Power Company for the York and Windsor property was \$79,475.00. Now, taking into consideration the amount shown for 1905 at \$11,650.00, \$60,000 in 1906; \$1,501.76 in 1911, and \$1,466.69 in 1912 and \$440.51 in 1913, I was short in the amount of \$4,856.55, that is short that amount in the amount that was picked up on the books of the first Edison Light and Power Company.

By the Commissioner:

Q. In other words, you added that \$4,000 and some dollars to reconcile for the amount on the books of the Edison Light and Power Company? A. That is right, and I added it all in the year 1912. Of course, I don't know ~~where~~ it was lost in the shuffle, if it was lost.

By Mr. Miller:

Q. However, your total figure for original cost of York and Windsor Electric Light Company was the figure placed on the books or appearing on the books of the merger you spoke of, so that you took ~~that figure as~~ original cost of the property, is that correct? A. That is right.

Q. Will you proceed? A. I think that is all, isn't it, Mr. Miller. I have been through all the companies.

By the Commissioner:

Q. As to the others, the Edison Light and Power Company, the Merchants Electric Light Company, you took those figures from the books? A. That is right. I would like to say, of

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course, that the Edison Electric Light Company and the Merchants Electric Light Heat and Power Company were by far the largest two constituent companies of the original constituent companies in the present Edison Light and Power Company.

By Mr. Miller:

Q. What is your estimate of the original cost of the property paid for by the respondent or its predecessors? A. \$4,237,105.09. This figure is made up of the \$4,382,647.08 shown by sheet No. 1 of Exhibit No. 23, plus \$9,317.79 representing customers donations still standing as credits to fixed capital, less \$154,859.78 representing donations made by customers and credited to reserve for renewals and replacements.

Q. What is your estimate of the original cost of all of respondent's property including the portion paid for by the customers? A. \$4,504,619.77. This was arrived at by adding the total donated capital amounting to \$267,514.68, as shown by Exhibit No. 22 to the estimated original cost of the property paid for by the respondent or its predecessors in the total amount of \$4,237,105.09.

Q. What was added to that to make your total estimate? A. \$2,067,514.68, that is the total shown by the other exhibit.

Q. What is shown by sheet 2 on Exhibit 23? A. This is a reconciliation of the differences between the undepreciated book value of fixed capital as shown by the books on June 30, 1936, and the estimated original cost as shown by sheet 1 of Exhibit No. 23.

Q. Have you made studies to determine the earnings and dividend records of the original constituent companies of the respondent in the early years of their operations? A. Yes.

Q. Have you prepared an exhibit reflecting the results of that study? A. I have.

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Earnings and dividend record of the Peoples Electric Light Company for the period from May 4, 1886 to October 31, 1893; produced and market Public Service Commission's Exhibit No. 24, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you five statements marked collectively Commission's Exhibit No. 24, and ask you if that is the exhibit to which you have referred? A. It is.

Q. What is shown by sheet 1 of that exhibit? A. This sheet reflects the earnings and the dividend record of the Peoples Electric Light Company for the five years ended in 1893. I was unable to locate any earnings statements from incorporation in 1886 to 1888 inclusive.

Q. Where did you obtain the information shown on sheet 1? A. I obtained the information under column "b" from Exhibit 23, which is my estimate of the original cost. Column "c" is a calculation of 6 percent times the amount shown in column "b". The amounts shown in column "d" were obtained from the capital stock tax reports as were the figures in columns "f" and "g".

By the Commissioner:

Q. Mr. McShea, what is the value of the capital stock at 6 percent on original cost for those years for these companies? Why did you put that in there? What value does that have? Since during those years the Commission allowed 7 percent as a return. A. Well, I only used 6 percent in this case because that is the current rate that is being allowed by the Commission.

Q. What was the purpose of making these calculations on a 6 percent return on these back years? A. To determine the extent if I could, of the lag of earnings of these companies in the early years.

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Mr. Miller: We feel, Mr. Commissioner, that the earnings for these companies may have been 5 percent or 7 percent or might have been 6 percent in these early years. The Commission, of course, was not in existence in 1886 or 1887, but the 6 percent figures was being applied as being a reasonable return in our judgment upon the property.

The Commissioner: I know, but after you got that all figured out what is the value, what is the purpose? That is what I want to know.

Mr. Miller: To show what the income of the companies was and to show how much it exceeded 6 percent.

The Commissioner: To show what the income of the company was?

Mr. Miller: To show what the return was so far as the figures we had indicate.

The Commissioner: You cannot determine by any such calculation what the income for those years of the company was.

Mr. Miller: No, that is true.

The Commissioner:.. You can only determine what the 6 percent return would have amounted to. Whether they earned that or whether they didn't earn that or whether they earned twenty times as much, there is nothing to tell that.

Mr. English: The difficulty as I see it, Your Honor, is that here again we have only assumption based upon another assumption. I am still in a very critical mood with regard to this Exhibit 23 as having anything to do with the original cost of this property. The explanation of the witness, as I stated before is merely from the evidence of the tax returns he took certain data which in the last analysis means nothing more than the paid-in capital, whatever that might mean.

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The Commissioner: That is true as to certain of these figures, not as to all. A large portion of this exhibit was taken from the books.

Mr. English: That is true. I am referring to these early companies. Now, then, we have another assumption upon that, where it is baldly stated that here is 6 percent on undepreciated original cost. I object to the use of that phrase in the light of this evidence. It is perfectly absurd for anyone to say that earnings should have been any definite amount during that time, during the unregulated period, bearing in mind that we didn't have a Commission or even a Commission statute in 1913.

The Commissioner: What I was trying to get at for my own illumination, if possible, is to find out what the value of this Exhibit No. 24 is in this proceeding. Will you please state that.

Mr. Miller: It is to show whether there was any lag in the early years of the company as bearing upon the allowance, if any should be made, by the Commission for going concern value.

The Commissioner: All right.

By Mr. Miller:

Q. I note that on sheet 1 of Exhibit 24 are shown the figures from 1886 to 1894. I believe you testified at the last hearing the Peoples Electric Light Company received its letters patent on January 19, 1891. Why do you show data for the period from 1886 on? A. As I explained this morning I found out since that the first letters patent received by this company were on May 4, 1886.

Q. What is shown on sheet 2 of the exhibit? A. This sheet contains a statement of the earnings and the dividend record of Westinghouse Electric Light Heat and Power Company for the period from October 14, 1892 to October 31, 1902.

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Mr. English: We object to any evidence based upon the assumption contained in Exhibit No. 23, or any testimony with regard to it in the light of the record as it stands at the moment, it being irrelevant, immaterial and incompetent.

Mr. Miller: I certainly think it is competent material and relevant, Mr. Commissioner, the weight to be given to it would be for the Commission to determine. We presented the basis for the computations made there and stated the manner in which the computations were made so that the Commission is perfectly able to determine what particular weight should be given to the exhibit.

The Commissioner: The objection is overruled. Note an exception for the respondent.

By the Commissioner:

Q. Mr. McShea, let me ask you one question. On these five sheets are apparently the same type of computations for these five different companies, is that right, a group of companies? A. You mean all five alike?

Q. In character? A. Yes.

Q. For different years, however? A. That is right. I took the earliest period.

Q. When you say income available for return, are those figures for income for those companies shown by their books?

A. In some cases, and in some cases as shown by the tax reports.

Q. The figure that you took from the tax reports are what figure that you put down in that column? A. The earnings of the company before any payment of interest or fixed charges.

Q. So you either took the exact figure from the books or

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from the tax returns? A. I think there were possibly two cases where I made adjustments.

Q. In what manner did you make adjustments? Is that shown on here? A. No, they are not shown on here. I can get them. It might take a little while to look over the papers.

Mr. English: We certainly want to know all about these adjustments.

The Commissioner: I think it is only the most elementary sort of fairness to show that, because when I asked the question I assumed that the amount of income available for return was an item shown on some definite record. Now, if it is not, if any of these items have been changed from the books or the tax reports of the company then I think they ought to be definitely marked, shown here and explained.

Mr. Miller: We are going to show in detail the sources from which this information was derived, and which figures were used, Mr. Commissioner.

The Commissioner: Particularly where objections were made.

Mr. Miller: We would like to prepare a statement showing in detail the source of the figures presented in the form of a statement rather than putting it on the record.

The Commissioner: I think that will save time.

Mr. English: That is agreeable to us, so far as it means anything or is useful.

By Mr. Miller:

Q. In general, Mr. McShea, from what source did you derive the information in Exhibit No. 24? A. From the books in some cases and in other cases from the capital stock tax reports.

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Q. When you say books, do you mean the books of account or the minute books? A. The books of account.

Q. The general books of account of all the five companies were not available from the dates of their incorporation? A. That is right.

Q. There were no books or records of the Peoples Electric Light Company except for a short period in 1888 and 1889. There were no books available for the Westinghouse Company—

By the Commissioner:

Q. Then for the other years, for the definite years that you have there, those are from the books and records? A. That is right.

Q. All right. A. There were no books available for the Westinghouse Company prior to January 1, 1901.

Q. And all the rest of the figures there were taken from the books and reports? A. That is true.

By Mr. Miller:

Q. How far back did you have accounting records of the Edison Electric Light Company? A. The records of the Edison Electric Light Company I believe they went all the way back to the beginning, except that there might be an open period of a few months at the very beginning where they only had possibly a cash book or something like that.

Q. Is the Edison Electric Light Company the largest of these five companies? A. It is.

Q. Now, the Merchants Company, the second largest, how far back did those books go? A. Those books ran all the way from 1900 the time of incorporation to 1915. With respect to the Red Lion Company there were no books for that company for any period.

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Mr. Miller: We propose to submit a detailed statement, Mr. Commissioner, showing exactly where they came from.

By Mr. Miller:

Q. Mr. McShea, on which page of this exhibit—the third column is headed “Average Undepreciated Original Cost,” that is your estimate of undepreciated original cost, is it not?

A. That is right.

Q. Now, have you prepared a statement of the charges to Public Service Commission Account No. 558, renewals and replacements during the five and a half year period ending June 30, 1936? A. I have.

Statement of charges to Public Service Commission Account 558, renewals and replacements, for the period from January 1, 1931 to June 30, 1936, produced and marked Public Service Commission's Exhibit No. 25, E. E. M., 11/18/36.

By Mr. Miller:

Q. I show you one sheet marked Commission's Exhibit No. 25, and ask you if that is the statement referred to? A. It is.

Q. What type of expense is covered by account 558? A. Depreciation of the property.

Q. What was the basis of computing annual depreciation during the five and a half year period? A. In 1931 and 1932 the annual amount for depreciation was computed upon the basis of 12½ percent of the gross operating revenue.

By the Commissioner:

Q. Mr. McShea, just so we have it clear, are these figures taken from the company's books or your calculation of what

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they should be? A. These figures are all taken from the company's books.

Q. As they are, without adjustment? A. That is right. At least the result is shown on lines 1 and 8, which are the amounts charged to account 558 renewals and replacements by the company.

Q. You mean the exact amount is listed here? A. That is right, plus amounts received from York Steam Heating Company for steam delivered to the Steam Heating Company less maintenance from January 1, 1933 to June 30, 1936. The basis of computation was the same but the rate applied to the gross revenue plus some credit was 10 percent.

By Mr. Miller:

Q. Then the effect of that is that the current total charges to income for the items of maintenance and depreciation were equal to 12½ percent of the gross revenue plus some credit during 1931 and 1932 and 10 percent during 1933, 1934, 1935 and six months of 1936, is that correct? A. That is right.

Mr. Miller: We are not prepared at this time to present testimony as to operating expenses, and we would like to have an opportunity to do that at a later time. In addition to the operating expense testimony the only thing the Commission has to present in support of its case in chief is the detailed statement in support of Exhibit No. 24. Now, if the respondents desire to cross examine any of the gentlemen who have so far testified in the case, they are at liberty to do so.

Mr. English: I think, Your Honor, we could really save time by having an opportunity of examining the record and particularly having these exhibits checked before cross examination.

The Commissioner: I, of course, want to give the

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company every reasonable opportunity for checking and going over all of these exhibits. Of course, on the other side I am anxious to expedite this matter. I don't want to have this case drag along unnecessarily. I just wondered whether it would be possible or feasible to cross examine on the exhibits that were submitted at the first hearing, or wouldn't that be feasible.

Mr. English: We have not had an opportunity to confer among ourselves with regard to that matter, your Honor. We have no disposition to prolong the case.

The Commissioner: Of course not, and I don't mean to insinuate that on your part. I don't want to set up a situation which would delay the matter at all.

Mr. English: My thought is that, of course, we will want these figures verified and our tendency would be to confine cross examination to matters that really need clarification, and not to simply spend a lot of time asking unnecessary questions.

The Commissioner: Then as I understand it we could expedite matters in the long run by giving you an opportunity to examine these twenty-five exhibits before proceeding with cross examination.

Mr. English: Exactly so.

Mr. Miller: That is perfectly satisfactory to us, Mr. Commissioner.

The Commissioner: That would mean, of course, that you would require more than today to examine these exhibits, so we could not go ahead tomorrow in that case.

Mr. English: Oh, yes.

The Commissioner: How long would you need reasonably, Mr. English, to accomplish that purpose?

Mr. Miller: I might state, Mr. English, that we have

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no more exhibits to present except that detailed statement in support of Exhibit No. 24, so that you won't be emboarrassed by more exhibits.

Mr. English: That is helpful. I was just asking Mr. Downes his idea as to the time that will be required for the study that is being made of the allocation of plant which has become, as your Honor will agree, a somewhat important element in this case. It is going to be difficult to cross examine Mr. Palmer, for instance, until we have had the benefit of our own study along the same lines. Now, that is going to take some little time to do, and I should hate to commit ourselves to a definite date just now, but the study is being made and with the utmost speed.

The Commissioner: Of course, the company has had long notice of the possibility of this hearing, certain definite notice for a number of weeks before the previous hearing a month ago. Certainly some of that study has already been made in the preparation of your case.

Mr. Downes: We started on that. What we are doing is bringing the whole matter down to date, June 30th.

Mr. English: We will be ready to go as far as we can at the next hearing whenever your Honor sees fit to fix it with the cross examination of these witnesses.

The Commissioner: Would you be able to proceed with your cross examination, we will say, in two weeks?

Mr. English: Oh, I should think so. We may not have that study complete in two weeks, but so far as cross examination is concerned we can go ahead.

Mr. Miller: Mr. Commissioner, it will take us approximately two weeks to analyze the operating expenses so that Mr. McShea can testify as to those. The Commission's staff has been working as hard as it could on

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this. It has been a very large job, and of course, as you know, the staff has had a good many other things to do at the same time.

The Commissioner: We will say along about the 10th of December, along there. I don't know what day of the week that falls. I think that will be practically three weeks from now. Say the 9th of December, Wednesday the 9th.

Mr. English: We will be prepared to go just as far as we can at that time.

The Commissioner: Now, Mr. English, just one word further before we adjourn for the day. The question I asked you this morning, in reply to it, you stated that your figure was something I think in excess of eight million dollars, did you not?

Mr. English: That is correct.

The Commissioner: Now, that figure certainly is made up of the properties of the Edison Light and to some extent of the Steam Heating Company, isn't it?

Mr. English: Yes, surely.

The Commissioner: Of that eight million dollars how much is represented directly in your figures by the Edison Light and Power Company property that it owns in dollars? Can you tell that?

Mr. English: I can only speak in very round figures.

The Commissioner: Yes, without committing you to anything definite.

Mr. English: Something in the neighborhood of six million dollars.

The Commissioner: And the other is a combination of the other two?

Mr. English: Right, the portion of the property that

Colloquy

we think the Commission should consider in the rate base here.

The Commissioner: We will adjourn here today and set the date for hearing definitely as the 9th and 10th of December.

Mr. English: As a matter of fact, Your Honor, I am sure that no time is being lost by these adjournments.

The Commissioner: I take it there is not. We must have time for the preparation of these additional exhibits, and you certainly must have time for the study of those exhibits.

Hearing Adjourned.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Public Service Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

E. E. MOYER,
Official Reporter

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Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Peansylvania, Wednesday, December 9, 1936.

Commissioner STAHLNECKER, presiding.

APPEARANCES:

S. G. MILLER, Esq., Harrisburg, Pa. for the Public Service Commission, Complainant

V. G. KEESEY, Esq., York, Pa.

CHARLES H. ENGLISH, Esq., Erie Pa. and

J. HARRY LABRUM, Esq., Philadelphia, Pa. For the Respondent

R. A. MCSHEA, JR., a witness called in behalf of the Complainant, being duly sworn, was examined and testified as follows on

Direct Examination

Mr. Miller: I will recall Mr. McShea for the purpose of placing in evidence certain supporting data which was referred to at the previous hearing in the form of exhibits.

Details of computation on estimated original cost of property of the Peoples Electric Light Company for the period from May 4, 1886 to April 11, 1894, produced and marked Public Service Commission's Exhibit No. 26, E. E. M., 12/9/36.

Statement of income available for return, of the Peoples Electric Light Company as reflected in capital stock tax returns and as adjusted for the fiscal years ended the first Monday in November from 1889 to 1893 inclusive, produced and marked Public Service Commission's Exhibit No. 27 E. E. M., 12/9/36.

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Mr. Miller: Exhibit No. 26 is the details of computations on estimated original cost of property of various constituent companies of respondent, giving the source of the information and various details relative to the securing of information and the information itself.

Exhibit No. 27 is a similar statement related not to original cost, but to income available for return of the constituent companies.

by Mr. Miller:

Q. Is that a correct statement of the contents, Mr. McShea?
A. It is.

Q. Do you desire to make any further explanation of these exhibits, Nos. 26 and 27? A. No sir.

Q. Mr. McShea, have you any corrections to make in your testimony given so far in this proceeding? A. I have corrections to make, typographical errors, I believe.

Q. Will you state what these corrections are? A. Page 169 first answer—The date “May 4, 1896” should read: “May 4, 1886”.

Page 175 first answer—fifth sentence—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 175 third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 176 first paragraph—first sentence—The date “May 4, 1896” should read: “May 4, 1886.”

Page 177 first question—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 177 second answer—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

Page 177 third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company.”

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Page 181 first answer, second paragraph—The amount "\$3,277.33" should read: "\$3,227.33."

Page 182 third question—"Edison Light and Power Company" should read: "Edison Electric Light Company."

Page 182 fourth answer—The word "day" should be "date."

Page 194 fourth answer, fourth sentence—The words "Red Lion" should read: "road or line."

Page 195 first answer, second sentence—The words "Red Lion" should read: "road or line" and the amount of "\$7,000" should be "\$11,000."

Page 195 first answer, third sentence—The phrase "I used the \$11,650 for the entire bond issue in 1906 at \$60,000" should be changed to "I used the \$11,650, and the entire bond issue in 1906 of \$60,000."

Page 197 last answer, fifth sentence—the date "June 1, 1931" should be "June 1, 1913."

Page 208, third answer—The date "January 1, 1901" should be "December 31, 1901."

By the Commissioner:

Q. They are all typographical errors, the corrections, are they not? A. That is right, and the changes of amounts and dates.

Mr. English: Those are the formal corrections of the witness' testimony.

The Commissioner: They are corrections of typographical errors.

Mr. English: There might be some others we might like to make.

Mr. Miller: We are glad to make these corrections, we might not be so pleased to make those later on.

The Commissioner: Assuming that Mr. English can show there is anything wrong?

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Mr. Miller: We will be delighted, of course.

The Commissioner: The typographical corrections to be made according to this sheet will be put in the record and the record corrected to this extent.

By Mr. Miller:

Q. Mr. McShea, have you completed your analysis of the operating expenses shown on Exhibit 6, and Exhibits 9 to 14 inclusive, covering the five and a half year period from January 1, 1931 to June 30, 1936 inclusive? A. I have completed my work on those exhibits.

Q. What comments have you as a result of this analysis? A. I have no further comments with respect to Exhibit 6 or 9. Exhibit 10 is a statement of the distribution system expenses as shown by the books. In the analysis of these expenses it was found that respondent charged to maintenance at various times the cost of materials included in the poles, cross arms, and so forth, and the labor cost of removing old poles and installing new poles. The uniform classification of accounts for electric companies does not permit a company to charge the cost of installing new property to operating expenses through the maintenance account.

For example, the first paragraph of P. S. C. Account No. 458, maintenance of poles and fixtures, reads as follows: "Charge to this account the cost of Labor employed, materials and supplies consumed and the expenses incurred by the utility in making repairs to the poles and fixtures of its distribution system."

In attempting to determine the extent of the charges to this account for new property installations, we made an analysis, a test analysis for the month of November, 1935. The total charges for that month amounted to \$2,040.75 made up as follows:

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Cost of 50 poles of various lengths from 20 to 40 feet	\$408.99
Labor cost	886.14
Other materials and supplies	615.89
Cost of operating automobiles	85.45
Miscellaneous	44.28

The labor cost was analyzed and it was found to be impossible to determine from the records the cost of labor properly applicable to maintenance and the amount applicable to new fixed capital, or the cost of removing old fixed capital. However, it was determined in our study that the total labor cost of \$886.14 did include substantial amounts representing cost of removing old poles and the cost of installing new poles, neither of which should be charged to maintenance.

We made no detailed analysis of the item of other materials and supplies amounting to \$615.89.

The cost of operating automobiles amounting to \$85.45, or the miscellaneous expenses amounting to \$44.28, no detailed analysis was made.

Q. Then the records of the company did not contain data which enables you to state the extent to which the cost of maintenance is over-stated from the books for any of the periods covered by Exhibit 10? A. I believe that is correct, yes.

Q. Does this condition apply to all of the maintenance accounts of the respondent including production, transmission and utilization systems, as well as distribution system? A. I don't know about that for the reason that no analyses were made of the maintenance accounts for any but the distribution system.

Mr. English: Then I take it, Your Honor, that the assumption that there has been any kind of over-statement is hardly justified.

The Commissioner: There is no assumption as to—

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Mr. English: Except in the question of counsel.

The Commissioner: You mean as to whether there is evidence of the figures being too much in any of these items, in any of the other accounts that he has not analyzed.

Mr. English: Exactly so.

Mr. Miller: The only account we analyzed showed that the figures were high.

The Commissioner: Well, the figures may be high for that account, but he says that he has not examined the others.

Mr. Miller: That is correct.

The Commissioner: The inference that is in anybody's mind cannot be helped. It is not going to be accepted by the Commission until an examination is made.

Mr. English: From our viewpoint, Your Honor, the others are matters of judgment.

The Commissioner: The witness' definite information from this analysis of these records is that these figures are too high.

The Witness: The only thing I had in mind in answer to this question is that I don't want anybody to think that I want my answer to Account 458 to apply to all the other departments, production and transmission. I want it clearly understood that I was speaking only of distribution when I was speaking of improper charges to maintenance accounts.

Mr. English: I think the witness is only expressing his own judgment in all fairness.

The Commissioner: He is expressing his opinions of the requirements of the uniform system of accounts, not only his opinion, but which he believes thoroughly have not been met.

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Mr. Miller: With reference to the account examined he has testified as to the results of that examination.

The Commissioner: Exactly. I don't think it is a question of opinion there. It is a question of fact in his judgment.

Mr. English: Of course, that is something we will discuss later. We think it is entirely a matter of judgment.

The Commissioner: You will have an opportunity to rebut that at the right time.

By Mr. Miller:

Q. Mr. McShea, you were able to make an analysis of any of the maintenance accounts applying to other systems than the distribution system? A. Well, we would have been able to, but we didn't get into it.

Q. Did you do it in fact? A. We didn't.

Q. Why? A. To make a proper analysis of the maintenance accounts of an electric company the size of this one would require a great deal of time. As a matter of fact it took one man about four weeks to make an analysis of Account 458 for one month, and then we didn't get the proper answer. We did find out—

By the Commissioner:

Q. What do you mean by not getting the proper answer? A. Well, I was not able to definitely segregate labor between maintenance labor and fixed capital labor.

Q. In other words, you were not able to resolve all the figures in that account in the time you had? A. That is right.

Mr. English: I think we both agree as to that.

By Mr. Miller:

Q. Was that because the information in the files of the company was not sufficient for ready analysis of the account?

R. A. McShea, Jr.—For Complainant—Direct

A. We were able to definitely ascertain the cost of the new poles charged to the maintenance accounts. We were not able from the records, or with the help of the office staff to make a segregation of the labor cost.

By the Commissioner:

Q. I think in fairness to the company at that point, would that be true of any electric company, who had their books set up as this company had? A. That is true of some other electric companies.

Q. In other words, what I am trying to clear is there was no obstruction to your analysis by the company? A. That is right.

By Mr. Miller:

Q. Would it be possible, Mr. McShea, to go into the files of some electric companies and obtain information which would permit you to break down the figures similar to these?

Mr. English: I submit that is objectionable, Your Honor, so far as this case is concerned.

Mr. Miller: We will withdraw the question.

By Mr. Miller:

Q. Mr. McShea, what did you examine, what data in the company's files did you examine in connection with your analysis of the distribution system maintenance accounts? By that I mean, did you examine the time tickets, or did you examine the work sheets or the bills? A. In the cost of labor I examined, I believe, all the time tickets for the month. In the case of poles we were able to get that without going back into the original records. The company's employees in the office I believe had a schedule of the poles which they submitted to us.

Q. Then in some cases you could get the data from some

R. A. McShea, Jr.—For Complainant—Direct

source, and in some cases you had to go back to the original records and make that summary yourself, is that correct? A. That is right.

Q. What comments do you desire to make in connection with Exhibit No. 11? A. I have no further comments on this exhibit.

Q. With respect to Exhibits 12 and 13? A. The only additional testimony I have relating to these exhibits concerns the manner in which expenses common to two or more of the affiliated companies in the York group, consisting of York Railway's Company, York Bus Company, York Steam Heating Company, Glen Rock Electric Light and Power Company, Glen Rock Ice Company and Edison Light and Power Company were allocated to the various companies. In 1931, 1932 and 1933 the common commercial department and the new business department expenses were allocated among the Glen Rock Electric Light and Power Company, York Steam Heating Company and the respondent to the exclusion of the York Railway's Company, the York Bus Company and the Glen Rock Ice Company. These allocations were made monthly and were upon the basis of the operating revenues of the respective companies. The amounts allocated to respondent in these three years on this basis, together with a few minor items charged direct to respondent and not allocated are reflected in columns "e", "f" and "g" of Exhibits 12 and 13.

In 1934, 1935 and 1936 the commercial and new business department expenses shown by columns "h", "i", "j" and "k" of Exhibits 12 and 13 reflect the result of the application of respondent's policies since January 1934 of an attempt to more accurately distribute expenses among the companies involved. In the case of salaries and wages the distribution purports to be upon the basis of a time study. In the case of supplies an attempt was made to make the distribution upon the basis of charging the companies involved in more or less direct proportion to the actual benefits received by them.

R. A. McShea, Jr.—For Complainant—Direct

Q. Do you have any further comments in relation to Exhibit 14? A. The testimony I just gave with respect to Exhibits 12 and 13 applies also to Exhibit 14, except that all of the companies in the York group, namely, the two Electric Companies, the Steam Heating Company, the Ice Company, up to the end of 1933 and the York Railways Company and the York Bus Company participated in the general administrative expenses.

By the Commissioner:

Q. Mr. McShea, just turn to Exhibit 13. I notice that there are quite a number of items in the first six months of 1936 under "k", such as salaries, canvassing domestic sales, canvassing rural sales and so forth, all these items are charged entirely to the electric company; there is no charge to the York Railways of items of that kind, is there? A. Yes, in 1936 there were no general allocations in 1936. They made the segregation of costs in 1936 upon the basis of actual time spent as nearly as they could determine.

Q. I mean, these particular accounts, whatever was paid for that kind of work was charged to the Edison Light and Power or the Glen Rock, I suppose, wasn't it? A. That is right.

Q. There was no charge to the York Railways or Bus Company for such purposes? A. That is right, but I think there was something charged to the York Steam Heating Company. Not in connection with electric activities, of course.

Q. No, of course, those were charged entirely to the Electric Companies? A. That is right.

Q. Perhaps I misunderstood what you said earlier.

By Mr. Miller:

Q. Now, do you have any comments with respect to Exhibit 15? A. As to the allocation of the general expenses as reflected by this Exhibit the testimony I just gave in connection with Exhibit 14 applies to the same extent to this Exhibit 15. However, I wish to call attention—

R. A. McShea, Jr.—For Complainant—Direct

By the Commissioner:

Q. You said expenses on Exhibit 15. The exhibit I have here is operating expenses, is that right?

By Mr. Miller:

Q. That relates to Exhibit 14, doesn't it, Mr. McShea?

The Commissioner. I think you just had the number wrong when you said 15. 14 is general expenses.

The Witness: In any event I am now talking about Exhibit 14.

By Mr. Miller:

Q. Are you speaking of Sheet 1 or Sheet 2 of Exhibit 14?

A. Sheet 2 of Exhibit 14.

The Commissioner: After the record is compiled I think we ought to have it exactly.

By Mr. Miller:

Q. Is your prior testimony applying to Exhibit 14 concerning only Exhibit 14? A. That is right.

Q. Now, you are taking up Sheet 2 of Exhibit 14? A. That is right.

Q. Proceed. A. I wish to call attention to the amount shown by P. S. C. Account 541 on Sheet 2 of Exhibit 14, at lines 23 and about 33. Account 541—

By the Commissioner:

Q. 541, doesn't that start with line 41 on here? A. Well, that line 41 happens to be a total of everything appearing here.

Q. Starting from 17, is that right? A. That is right.

Q. Lines, what did you say? A. The lines—the amounts constituting lines 23 and 33, you see they are—

Q. Yes.

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The Witness: It will be noted that although Edison System accounts are shown in columns "a" and "b", there are no account numbers. The amounts are grouped in columns "c" and "d". This is due to the fact that the respondent only had groups of accounts instead of separately for the years 1931-33. I have prepared a statement showing how this was done for the charges to this account.

Analysis of portion of charges to P. S. C. Account No. 541—other general expenses for the period from January 1, 1931 to June 30, 1936, produced and marked Public Service Commission's Exhibit No. 28, E. E. M. 12/9/36.

By Mr. Miller:

Q. I show you a paper identified as Commission's Exhibit No. 28, and ask you if that is the analysis that you have mentioned? A. It is.

Q. Do you wish to call the Commission's attention to any of the items on this exhibit? A. Yes, on lines 13 and 14 appear charges, beginning in 1933 for payments to Harry Reid and Company, Inc., for management service. These payments began in August of 1933, the month in which payments to Penn. Central Light and Power Company at Altoona were discontinued.

Q. What was the basis for these payments? A. In August 1933 and up to November 1934 inclusive the payments were at the rate of one-half of one percent of gross revenue, plus one percent of the net earnings of the respondent. Beginning in December 1934 and continuing to June 1936 the flat rate of \$1700 per month was paid by the York Companies as a group. Of this amount 80 percent or \$1360 per month has been borne by respondent.

Q. Is the respondent affiliated with Harry Reid and Company, Inc.? A. I don't know.

R. A. McShea, Jr.—For Complainant—Direct

By the Commissioner:

Q. What was this for? What were these charges for? A. Management service. Beyond that I have no details.

Q. Management service may mean a lot of things. You don't have any details as to what service was rendered? A. No, I don't.

Mr. Miller: If the two companies are affiliated, Mr. Commissioner, a copy of the contract for management service should be on file with the Commission.

The Commissioner: If they are affiliated.

Mr. English: I think I am justified in saying they are not, Your Honor.

Mr. Keesey: The contract was entered in evidence in one of these proceedings.

The Commissioner: My recollection is that it was offered in the merger proceeding, that is, the contract.

Mr. Miller: Mr. Commissioner, I will offer by reference the contract presented in the merger proceedings for this record.

The Commissioner: It will be admitted by reference.

Mr. Keesey: I am quite sure it is in one of the proceedings, and I am quite sure it is in the original merger proceeding.

Mr. Miller: If you offered it in the merger proceeding, there is no objection to having it in this proceeding.

Mr. English: Not a particle.

The Commissioner: I take it there is no objection on the part of the company even if it is not in the record.

Mr. English: We will be very glad to submit a copy.

By Mr. Miller:

Q. At the first hearing, Mr. McShea, you testified with reference to the matter of the respondent's annual tax liability—

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The Commissioner: Excuse, Mr. Miller, but I am interested in one item on this Exhibit 28, at line 3.

By the Commissioner:

Q. What is, "goodwill advertising and publicity"? What does that mean, roughly four to five thousand dollars a year? What does goodwill advertising mean? A. I am afraid you will have to ask the company to answer that.

Q. Do you know what it covered? A. I have made no detailed analysis of that item.

The Commissioner: The words, "goodwill" would intrigue me.

Mr. English: I should say, Your Honor, that it is something on which the utilities stand in peculiar need at the present time.

The Commissioner: Then I will try to get information as to that from the company at the proper time.

Mr. Miller: We hope to get information on a good many of these items, Mr. Commissioner.

Mr. English: Mr. Downes has suggested, Your Honor, that usually concerns Community Chest contributions and that sort of thing.

The Commissioner: I thought it did, but I would like to know.

The Witness: I don't have the contributions paid in that item. I think they are on line 12, the item, "donations" up to the end of 1933, and after that in line 33.

The Commissioner: Miscellaneous general expenses. However, we can develop that later.

By Mr. Miller:

Q. Mr. McShea, in your testimony relating to annual tax liability did you omit any items? A. I did.

R. A. McShea, Jr.—For Complainant—Direct

By the Commissioner:

Q. What exhibit are we on now? Still on 14? A. This was not an exhibit; it was testimony.

Mr. Miller: My question refers to the general testimony submitted by Mr. McShea, not in exhibit form at the first hearing.

The Witness: I failed to mention that under the provisions of Title 9 of the Social Security Act which became—

By the Commissioner:

Q. You mean the Federal Security Act? A. That is right. The respondent is liable for unemployment insurance payroll tax. The tax became effective January 1, 1936 at the rate of 1 percent on the payrolls.

Q. The tax became effective when? A. January 1, 1936 on payrolls of the company. I am speaking now of Title 9 of the Social Security Act. The rate will be 2 percent in 1937 and 3 percent in 1938 and thereafter. In the first six months of 1936 this tax amounted to \$1562.20 as shown by line 3 of Exhibit 14.

Under Title 8 of the same Act provision was made for a tax to be used for the purpose of setting up a national old age pension system to which both employers and employees will contribute. This tax will become effective January 1, 1937 at the rate of 1 percent on the payroll, but it will not apply to wages in excess of \$3000 per annum.

Q. You mean by that it will not apply to any employee on the part of his compensation that is above \$3000? A. That is right.

Q. There will be a tax up to \$3000? A. That is right.

Q. There will be a tax up to \$3000? A. That is right.

R. A. McShea, Jr.—For Complainant—Direct

By Mr. Miller:

Q. Does any such salary amount limitation apply in Title 9 of the Act? A. No. The rate will be 1 percent for three years to the end of 1939; for the next three years it will be 1½ percent, and will increase ½ percent each three years until the maximum of 3 percent is reached in 1949.

The Commissioner: However, you are discussing something now which has not yet happened.

Mr. Keesey: The law has been enacted.

The Commissioner: I know, but I thought he was discussing now items on the company's books. Why are you discussing expenses that are to be imposed on the company?

Mr. English: I think that he testified on the theory that rate making is a prospective—

The Commissioner: I am asking him.

Mr. English: I am answering for him.

The Commissioner: Let the witness answer.

The Witness: I am giving this for the reason that we can hardly have this case finished by the end of this year, and we will be fixing rates for the future, which determination probably won't be made until the end of 1937—

By the Commissioner:

Q. A determination will be what? A. A determination in this case will probably be made some time near the end of 1937.

The Commissioner: It will be a long time to the end of 1937 as far as I am concerned with it. You mean the final determination if it goes to an appeal.

The Witness: That is right.

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Mr. Miller: Which we are afraid of, Mr. Commissioner.

The Commissioner: I am not afraid of it.

Mr. English: Nor are we, Your Honor.

By Mr. Miller:

Q. What, Mr. McShea, did the donations to various welfare and charitable organizations amount to for 1934, 1935 and the first six months of 1936? A. In 1934 those donations amounted to \$2750; in 1935 \$2800, and in the first six months of 1936 \$2140.

Q. Have you any further comments or corrections on or in your testimony? A. There are one or two items in my mind that I would like to correct. At the last hearing I believe I said that the Red Lion Company had no indebtedness up to the time they sold out to the York and Windsor. I found out since that, looking over the records in the office of the Secretary of the Commonwealth, that they filed some kind of paper relating to the issuance of some indebtedness I think in the amount of between two and three thousand dollars. I can get the exact amount if you want it.

Q. Is that all? A. I also found that I neglected to mention at the last hearing that the Peoples Company which applied for letters patent in Pennsylvania in 1886 was a continuation of a corporation which originally had been incorporated in West Virginia. Of course, I have no information at all on that company. I think that is all at this time.

Mr. Miller: Mr. Commissioner, I would like to withdraw Mr. McShea at this time and present some correcting testimony, formally correcting testimony, by some of the other Commission witnesses, and then Mr. McShea will be available for cross examination.

The Commissioner: Very well, proceed.

H. Root Palmer—For Complainant—Direct

H. ROOT PALMER, a witness called in behalf of the Public Service Commission, being duly sworn, was examined and testified as follows on

Direct Examination

By Mr. Miller:

Q. Mr. Palmer, have you any change to make in the amounts allocated to electric and steam properties. The amount allocated to the electric property being \$841,323, and the amount allocated to the Steam Company being \$507,117, which allocations appear on Sheet 10 of Exhibit 18? A. I have. After certain adjustments in land allocations on Sheet 1, and building allocations on Sheet 2, the amount of \$841,323 allocated to electric property would be \$841,216, and the amount \$507,117 allocated to steam property would be \$507,224. A decrease of \$107 in the electric allocation and an increase of \$107 in the steam property allocation.

Q. Why did you find it necessary to make those adjustment and land allocations? A. The changes were caused by revision of the areas in square feet of the subdivisions of the property between Gas Alley and Philadelphia Street, and from North Park Alley to the Railroad, as shown on Schedule 1, Exhibit 18, and the effect of the land revision on the structures that were allocated between electric and steam property.

By the Commissioner:

Q. The percentage of change is very very small. \$107 out of \$800,000? A. That is all.

By Mr. Miller:

Q. What figures on Sheet 11 must be changed as a result of the changes on Sheet 10? A. Sheet 11 the amount of \$841,323 allocated to the electric property would be \$841,216,

H. Root Palmer—For Complainant—Direct

a reduction of \$107; and the amount of \$507,117 allocated to the steam property would be \$507,224, an increase of \$107.

The Commissioner: Wherever it appears in this whole exhibit, \$841,323 would be changed accordingly, wouldn't it?

Mr. Miller: Yes, but depreciation and interest enter into that later on.

The Witness: On Sheets 12 and 13, Sheet 12 applying to depreciation, in comparison with page 32 of the Day and Zimmerman appraisal amounting to \$841,323 new, and \$712,201 depreciated, allocated to the electric property, would be \$841,216 new and \$712,086-depreciated.

By the Commissioner:

Q. In other words, the figure changes to the extent of \$107?

A. Electric property allocation of \$107 new and \$115 depreciated.

By Mr. Miller:

Q. Is the same change of \$107 new and \$115 depreciated necessary on Sheet 14? A. Yes sir.

Q. And the same change should be made in the comparable figures on Sheet 1, is that correct? A. It is.

Q. Now, will you explain the basis of the allocation of land areas as shown on Schedule 1?

The Commissioner: Of exhibit what?

Mr. Miller: Exhibit 18.

The Witness: The areas of the subdivisions shown on Schedule 1 were taken from the Day and Zimmerman appraisal based on the gross floor area for turbine room, new and old boiler rooms, rotary and bus rooms and the operating office and store room, a field inspection and blue prints of the property showing the dimensions. A

H. Root Palmer—For Complainant—Direct

check of the allocations as shown on Schedule 1 showed that the sum of the areas of the subdivisions as used was in excess of the area of the total property. The areas of the subdivisions were used as a percentage of the total of this property, as appraised by Day and Zimmerman of \$30,250. The use of the greater area subdivisions as a percentage of allocation did not affect the Day and Zimmerman appraisal of \$30,250 for this property but did affect the amount allocated between the subdivisions.

By Mr. Miller:

Q. Have the allocations been checked on the basis of the adjusted areas? A. They have. Based on the building dimensions in the Day and Zimmerman appraisal shows 28,718.56 square feet built up area, open area adjoining the turbine, rotary and bus rooms of 797.12 square feet area, driveway, walkway and parking of 6,308.81 square feet, making a total of the subdivisions of this property of 35,824.49 square feet, or say 35,824 square feet. The Day and Zimmerman appraisal, Page 205 gives the dimensions of this property which shows 35,810.838 square feet actual or say 35,811 area. This is a difference in the total area of this property based on the sum of the building areas and the actual area of the property of 13.65 or say, 13 square feet, the actual area being 13 square feet less than the sum of the building area basis.

Q. Can you account for this difference of approximately 13 square feet? A. This difference of 13 square feet may be accounted for by the difference between the length of the operating office and store room, Account 279 Page 407 of the Day and Zimmerman appraisal of 119.75 feet and the land measurement Account 204 Page 205 of the appraisal of 119.32 feet an excess in building area over land area of 13.65 or say, 13 square feet.

Q. What is the result of the allocation of the property

H. Root Palmer—For Complainant—Direct

based on the revised areas of the subdivision? A. After adjustments in land allocation on Sheet 1 Exhibit 18 the amount of \$25,630 and the amount of \$16,274 allocated to steam property would be \$16,430, an increase of \$156 in the electric property allocation at an increase of \$156 in the steam property allocation. There is no change in the total amount for the property of \$42,060 as shown in the Day and Zimmerman appraisal.

Q. Did this revision of land allocations result in any change in the allocation of structures to the electric and steam properties? A. Only in the item of paving, roadways, walkway, sewage system and so forth of \$5,727, Page 222 of the Day and Zimmerman appraisal. The revision of land areas of the subdivisions on Sheet 1 changed the amounts on Sheet 2 allocated to electric property of \$2,989 to \$3,038 and to steam property of \$2,738 to \$2,689, an increase in the electric property allocation of \$49 and a decrease in the steam property allocation of \$49. There is no change in the total amount in the Day and Zimmerman appraisal.

Q. What was the amount of the total change as a result of the revision of the areas of the subdivisions of land? A. There has been no change in the amount of \$1,348,440 as shown in Day and Zimmerman appraisal. There is a total change in the amounts allocated to electric and steam property as shown on Sheet 10 of \$107. The electric allocation being decreased by \$107, and the steam allocation increased by the same amount, \$107.

Q. Have you prepared revised sheets of Exhibit 18, Sheets 1, 2, 10, 11, 12, 14 and 16, showing the changes which you have testified to? A. I have.

Schedules showing revisions in corresponding sheets of Exhibit 18, produced and marked Public Service Commission's Exhibit No. 29, E. E. M., 12/9/36.

L. C. Bierman—For Complainant—Direct

By Mr. Miller:

Q. I ask you if that exhibit consists of schedules showing revisions which you have testified should be made in corresponding sheets of Exhibit 18? A. It does.

Q. Have you anything further to state with reference to your testimony, Mr. Palmer? A. I have not, except on Page 94 of the testimony the typographical error, the word "next" has been shown instead of the word "net".

Q. The word should be what? A. It says "next". it should read "net".

Mr. Miller: I will withdraw Mr. Palmer at this time and call Mr. Bierman.

L. C. BIERMAN, a witness called in behalf of the Public Service Commission, being duly sworn, was examined and testified as follows on

Direct Examination

By Mr. Miller:

Q. Mr. Bierman, in view of the revision made by Mr. Palmer in his figures has it been necessary for you to prepare a revision of your summary as shown in Exhibit 21? A. It has.

Q. Have you prepared such a revision? A. I have.

Summary of reproduction cost estimate as of June 30, 1934 from Page 32 of Report No. 3054, Day and Zimmerman, Inc., with deductions from Accounts 204-215, inclusive, for property used for steam production, property not used or useful, and property used exclusively for York Railways Company, and with adjustments in allowance for indirect costs, produced and

L. C. Bierman—For Complainant—Direct

marked Public Service Commission's Exhibit No. 30,
E. E. M., 12/9/36.

By Mr. Miller:

Q. I show you a sheet marked Commission's Exhibit No. 30, and ask you if that is the sheet which you prepared? A. It is.

Mr. Miller: This Exhibit 30 should be substituted for Exhibit No. 21.

The Commissioner: Not substituted, but Exhibit 30 is a correction of Exhibit 21.

Mr. Miller: Well, Exhibit 30 shows all of the figures shown on Exhibit 21 and embodies certain corrections in the Exhibit 21 figures.

The Commissioner: You are not suggesting that we take out Exhibit 21 and put this in instead, are you? Leave them both in, otherwise it would leave a gap in the sequence of the exhibits.

The Witness: In addition to the correction made in line with Mr. Palmer's previous testimony there was a mathematical correction in regard to applying the cost of financing of three percent to reproduction cost less accrued depreciation which is shown on this schedule.

By Mr. Miller:

Q. Then Exhibit 30 embodies that change as well as the changes necessitated by Mr. Palmer's recomputations? A. That is right.

By the Commissioner:

Q. As a matter of fact these changes are very small in amount? A. That is right.

Q. In other words, they are almost infinitesimal? A. Yes.

L. C. Bierman—For Complainant—Direct

Mr. Miller: At this time I desire to offer Commission's Exhibits 1 to 30 in evidence.

Mr. English: I cannot tell offhand how many of these exhibits are computations. I am not asking the gentleman to offer them individually, but I do have in mind that most of Mr. Palmer's exhibits have comments on them which I think are not properly parts of any exhibits, and I object to all of his exhibits which contain comment of any sort.

The Commissioner: For example, Mr. English?

Mr. English: Exhibit 13, Sheet 1.

The Commissioner: Where is the comment?

Mr. English: Well, at the end of it, if we are reading the same one, Your Honor.

The Commissioner: Your objection is to the comment rather than to the exhibit itself?

Mr. English: Yes; any exhibit is objectionable which contains testimony over and above and in addition to mere computation.

Mr. Miller: Mr. Commissioner, they are presented as testimony, and if Mr. English desires Mr. Palmer to make the statements under oath, we can easily put him on the stand and leave him read the exhibit.

The Commissioner: Didn't Mr. Palmer in his testimony read these comments, all of them, as I remember it, under oath?

Mr. Miller: He certainly explained the exhibits thoroughly.

By the Commissioner:

Q. Didn't you, Mr. Palmer? Didn't you read these comments? A. I don't recall all of them; some of them.

Mr. Miller: He put it in exhibit form, and it seems to be a more satisfactory method than to require Mr.

L. C. Bierman—For Complainant—Direct

Palmer to repeat and read every word of it.

Mr. English: My objection is perhaps technical, but from my experience in the trial cases I certainly feel that the Commission ought not receive testimony in that form. It is quite proper for the witness in response to questions of counsel to submit whatever information may be regarded as relevant, but a statement in writing I think is objectionable.

Mr. Miller: An objection might be taken on that ground to any figures in any exhibit or any statements.

Mr. English: Of course, it is a different proposition when the witness makes statements in writing.

The Commissioner: Is your objection confined to the comments at the end of these exhibits of Mr. Palmer's, or to the comments and the figures?

Mr. English: To the comments. Entirely to the comments, because the comments are there our position is that the exhibits themselves are objectionable.

Mr. Miller: It is our position, Mr. Commissioner, that the verbal testimony of our witnesses and the exhibits are on a par, and that whether Mr. Palmer made his comments in the form of verbal testimony or in the form of written comments on the exhibits, does not make any difference whatever.

The Commissioner: Exhibits 1 to 30 will be admitted to the record and an exception noted for Mr. English as to the admissibility of at least that part of the exhibits introduced through Mr. Palmer which comment, rather than the tabulations. It is further noted that Mr. English objects to the propriety of these exhibits in their entirety because of the comments.

Mr. English: May my objection be enlarged a little. I referred to Mr. Palmer's exhibits, it may be that some of Mr. McShea's exhibits have comments on them.

L. C. Bierman—For Complainant—Direct

The Commissioner: I don't think so. You mean if there are any that both are objected to?

Mr. English: If there are any.

The Commissioner: That will be noted.

Mr. Miller: If the Commissioner desires we can recall these gentlemen and meet Mr. English's objection flatly.

The Commissioner: Certainly if the witness reads into the record comments that he has typed on the exhibits—

Mr. Miller: That was the thought in my mind.

The Commissioner: —it seems to me that meets the objection made by you. Therefore, I rule that the exhibits are to be admitted to the record upon the conditions as stated.

The Commissioner declared a recess of five minutes.

AFTER RECESS

L. C. BIERMAN, recalled.

Direct Examination

Mr. Miller: Before proceeding with Mr. Bierman's testimony relative to certain changes in the record, I would like to offer another exhibit.

Statement showing discount, brokerage or underwriting commission, and mechanical expense on all security issues approved by the Commission, to November 15, 1936, which were proposed to be distributed ultimately to the general public, produced and marked Public Service Commission's Exhibit No. 31, E. E. M., 12/9/36.

Mr. Miller: I would like to offer as Commission's Exhibit No. 31, a copy of which was sent to each of

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counsel for the respondents, consisting of a statement showing discount, brokerage or underwriting commission, and mechanical expenses on all security issues approved by the Commission to November 15, 1936 which were proposed to be distributed ultimately to the general public.

The Commissioner: Exhibit No. 31, will be admitted to the record.

Mr. LaBrum: These are just statements of fees, there are no comments or criticisms?

Mr. Miller: Mr. Commissioner, I might point out that in the first column at the left of the exhibit it shows the security docket numbers. That has reference to the official records of the Commission, and all of the papers and proceedings before the Commission will be found at those docket numbers if the respondent desires to refer to them.

The Commissioner: The column, "Remarks" at the right hand side, those are statements of facts in the security applications, are they not?

Mr. Miller: That is correct, Mr. Commissioner.

The Commissioner: Not remarks by the person who made the tabulation. I mean in the sense of this opinion, they are statements of fact as given in the application, are they not?

Mr. Miller: In the applications or papers filed in the security dockets listed.

The Commissioner: Exhibit No. 31, will be admitted to the record.

By Mr. Miller:

Q. Mr. Bierman, have you any corrections to make in your testimony? A. I have one correction. On Page 155, Lines 11 and 12, should read as follows: "That was taken from the balance sheet as of December 31, 1935."

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Q. Have you any further comment? A. I don't.

Mr. Miller: Mr. Commissioner, the Commission rests, so far as direct testimony goes.

(Remarks by Mr. Miller at his request off the record).

Mr. English: Before we proceed with cross examination, when this investigation started we intended to give to the Commission all of the books and records of the company for their inspection. It happened that when the representatives of Day and Zimmerman began a search of the premises they ran on to a couple of old books, and in fairness to ourselves we want to submit them now for whatever examination the gentlemen of the bureau may desire to make.

The Commissioner: What sort of books are they?

Mr. English: One is an old minute book of 1885 to 1887 of the Edison Company. The other is a general ledger and journal of the Westinghouse Company. They are not voluminous at all.

The Commissioner: You are not offering them in the record.

Mr. English: No, we are just submitting them for examination.

The Commissioner: As the other books and records of the company are.

Mr. English: Exactly so.

Mr. Miller: The company has, I believe, made available to the Commission's representative all the records which they had, and now they are permitting the Commission's representatives to examine these records which they found since the Commission's representatives were in York.

Mr. English: That is exactly the situation.

R. A. McShea, Jr.—For Complainant—Cross

Re A. McSHEA, JR., recalled.

Cross Examination

By Mr. English:

Q. Mr. McShea, in your testimony you undertook to tell us something about the ownership of the stock of the Edison Company. Will you make that a little more definite. Do you know how the stock of the Edison Company is owned? **A.** All of the common stock of Edison Light and Power Company is owned by York Railways Company.

Q. Do you know where it is pledged, if anywhere? **A.** I think it is pledged under the mortgage of the York Railways Company.

Mr. English: May I say for Your Honor's convenience, and for counsel on the other side, that I will refer to pages of the testimony. I am referring now to Page 27.

By Mr. English:

Q. Then it is a fact that the common stock of the Edison Company is pledged under the mortgage of the Railways Company with the Tradesmen's National Bank of Philadelphia as trustee? **A.** I believe that is correct.

Q. Do you know, or did you undertake to find out, the extent to which property of the Railways Company is used by the Edison Company in York?

The Commissioner: Used for what purpose?

Mr. English: What I have in mind, Your Honor, is that the impression, inadvertently perhaps, has been created here that the Railways Company is the beneficiary of certain property of the Edison Company. The purpose of this line of questions is to develop the fact that—

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The Commissioner: You mean property was referred to by our witnesses as really belonging to the York Railways that was included in the rate base of Edison, in our opinion?

Mr. English: It is rather the other way round. Property of the Edison Company that is being used without compensation by the Railways Company.

The Commissioner: Yes.

Mr. English: Now, then, I propose to show by the witness, I am sure that he will be glad to help us in that respect, that there is certain property of the Edison Company—of the Railways Company which is being used by the Edison Company.

Mr. Miller: I have no objection, but I believe Mr. Palmer might be a better witness to develop that.

Mr. English: But this witness undertook to testify with regard to it.

The Commissioner: That is correct, proceed.

Mr. English: I have in mind Page 29 of his testimony.

By Mr. English:

Q. Don't you know it to be a fact, Mr. McShea, that more than 10,000 square feet of property of the Railways Company is being used for all practical purposes by the Edison Company? A. At what location are you speaking of now?

Q. I am asking you.

The Commissioner: Now, Mr. English, what do you mean by 10,000 square feet?

Mr. English: Warehouse, garage, carbarns for the supply of materials, and all practical purposes.

The Commissioner: Why would the Edison Electric Company be using part of the carbarns of the York

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Railways? You mean for storage of equipment and that sort of thing?

Mr. English: That is my understanding.

The Witness: I don't know of any situation such as that. I have not personally been out to the carbarn and the power plant, and various other places where the Railways Company owns property to make a division of the use of that property.

By Mr. English:

Q. Then I am sure you would want to correct the impression, if you made one in your testimony, to the effect that the Railways Company was getting more than an even break from the Edison Company in the use of real estate, wouldn't you?

The Commissioner: I don't know whether the witness does or not, Mr. English. If that is so, that is one thing; if it is not so, or if it is a matter of opinion, that is quite another thing.

Mr. English: It is a question of fact. What I am trying to do is to get rid of what we think is a wrong impression.

The Commissioner: The witness says he does not know that there are 10,000 feet of space being used by Edison Electric Company of property that belongs to the York Railways for the benefit of the Edison Electric, so he certainly cannot express an opinion. If he was wrong, if he created an assumption or the other way, unless he does know—I am not saying that what you say may not be so—but until the witness knows, I don't see how he can express an opinion if he was wrong.

Mr. English: If he does not know he should never have expressed an opinion, which he does in this record.

The Commissioner: I don't think that is quite a fair

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picture, Mr. English. You say do you know that 10,000 square feet of space is used by Edison Light and Power Company belonging to York Railways Company. Mr. McShea says he does not know, and then you say if that is true didn't you perhaps create an unintentional false impression. You are asking him to admit something based on a picture which you present which he says he does not know anything about. I don't see how you can do that.

Mr. English: I certainly want to be entirely fair, Your Honor. What I had in mind was these questions referring to certain subsidiaries, companies which pay the respondent rent for the use of space.

The Commissioner: I am not attempting in any way to restrict you on examination, on anything he said, but to draw conclusions that are at variance, based on your statement that 10,000 feet of York Railways property is used by Edison Light and Power Company for the benefit of Edison Light and Power, I don't think is a fair proposition to put to this witness.

Mr. Miller: If Mr. English shows the facts which are at variance that will be all right.

The Commissioner: That has to be done through other than Mr. McShea.

Mr. Miller: If Mr. English presents testimony showing facts contrary to Mr. McShea's understanding the Commissioner is entirely willing to take the facts as against the understanding that Mr. McShea has.

Mr. English: I always supposed it was perfectly legitimate in cross examination to ask the witness to correct his own misapprehension if he has created one.

The Commissioner: You are asking him, as I understand it, to correct what you think is a misapprehension based on a statement of fact which you now present to

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him, which he says he does not know anything about. I think the facts have to be produced by your own witness before you can ask him to modify an opinion based on those facts.

Mr. English: There is a disagreement between yourself and myself. I don't want to be too persistent about it, but I do think we have a right to ask the witness to correct this testimony.

The Commissioner: Suppose you say that a million feet of property of York Railways is used by Edison Light and Power Company for their benefit, and he says he does not know, of course, that would change very drastically the position that he takes. How can you expect him to admit that 10,000 feet of York Railways property is used by Edison Light and Power just on your say so. I am not disparaging what you say in the slightest, but I don't think it is a fair position to put this witness in.

Mr. English: I will withdraw what you regard as an unfortunate question. The precise form is not important, but what I had in mind was this: Mr. Miller asked him with regard to these facts, and my only purpose is to develop if he knows the fact that there is an interchange of facilities, so to speak, which is equivalent to rental.

The Commissioner: Ask him if he knows. If he doesn't know he can say so, but I don't think you ought to ask him to draw conclusions based on something that he doesn't know anything about.

By Mr. English:

Q. Did you inquire, Mr. McShea, as to the extent to which the respondent company had the use of certain facilities of the Railways Company in York? A. I did with respect to the

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office building, but not in connection with any other building or property.

Q. Did you make any estimate as to the extent to which the office building is shared between the different companies? A. No, I made no estimate. I requested several weeks ago, or perhaps a month and a half ago, that the company should furnish me with an estimate of the division of the use. Now, I have not received that, and of course, I am not in any position to make an estimate such as you mention.

The Commissioner: Mr. English, is it your own position that Edison Light uses for its benefit a certain space of the York Railways, and York Railways does not against that use facilities or space of the Edison Light and Power Company at all, that it is all to the benefit of the Edison Light and Power?

Mr. English: No, Your Honor. What I am trying to get away from is the imputation here that the Railways Company gets undue advantage as far as the respondent company is concerned. That is not in harmony with the facts.

The Commissioner: In the use of space?

Mr. English: Right. In the use of space and facilities.

By Mr. English:

Q. On Page 45 you testified to some extent as to the cost of power to the Edison Company. Just what were the factors that you took into consideration in determining the cost of power? A. Where is that, Mr. English?

The Commissioner: That is at the bottom of the page, comes down really to the amounts. He refers to Exhibit No. 6, don't you, Mr. English?

Mr. English: Yes, I think you are right, Your Honor, Sheet 29 of Exhibit No. 6.

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: The Witness: Will you refer to the question now.

By Mr. English:

Q. Have you made an analysis of the cost of production or producing electricity?

The Commissioner: That is all you are referring to.

Mr. English: Exactly so.

By Mr. English:

Q. What factors did you take into consideration?

The Commissioner: What we are trying to get at is what factors Mr. McShea took into consideration in making up Exhibit 6, is that correct?

Mr. English: Yes sir.

The Witness: Exhibit 6, the first page of Exhibit 6, is a summary of all the production system accounts as shown by the books.

By the Commissioner:

Q. In other words, operating expenses? A. That is right.

Q. That is generating steam power? A. That is right, that is generating steam power. Included in Exhibit 6 are statements showing the cost of producing electricity, also as shown by the books.

By Mr. English:

Q. Did you take into consideration, Mr. McShea, in that connection the benefits so far as Edison is concerned in connection with the production of power as an incident to steam, or steam as an incident to power, if you care to put it that way? A. I don't think I just understand what you mean.

Mr. English: I think you have answered the question.

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The Commissioner: I object to that vigorously. I think the witness has answered you, Mr. English, that he didn't understand the question as you put it.

By the Commissioner:

Q. Is that correct, Mr. McShea? A. That is right.

Mr. English: The point we want to make clear is that the witness in his direct testimony, from our viewpoint at least, went far afield in expressing opinions.

The Commissioner: If the witness does not know the answer to your question, if it is clearly stated, let him say so, but I don't want even the witnesses for the Commission or the witnesses for the Company trapped or put in a false position by an answer which was obviously not intended to go to the merit of your question.

Mr. English: I am perfectly willing to go the entire distance with Your Honor in that respect.

The Commissioner: Let us have the question stated so that the witness understands it clearly, so he can make a clear and complete answer, so far as he can.

Mr. English: May I put this question this way, Your Honor?

The Commissioner: Put it any way you want as long as you get to the meat.

By Mr. English:

Q. Did you undertake to investigate the extent to which the Edison Company gets financial benefit from the generation of power which as we say is incidentally used for the sale of steam? I am referring now to the business of the Steam Company which you have undertaken to segregate from the Power Company earnings.

The Commissioner: In entirety? Has he done that in entirety.

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Mr. English: Yes. That is the theory, Your Honor.

The Witness: You say the extent to which they benefit financially?

Mr. English: Yes.

The Commissioner: Let me see whether I understand the situation at York. This plant, this so-called Steam Heating Plant, they are producing steam as a primary object, but as a secondary object a certain amount of electricity.

Mr. English: Electricity, yes.

The Commissioner: That electricity is used by the Edison Company and disposed of by sale.

Mr. English: Sold to its customers?

The Commissioner: Is that correct?

Mr. English: That is our understanding.

The Commissioner: As I understand it, you are trying to find out from Mr. McShea, and I am interested in that, of course, as to whether that part of the use of the Steam Plant, in the proper amount, whatever it is, as related to the production of kilowatt hours by that same Heating Plant, which is sold by Edison Light for which it gets paid, whether that has been taken into consideration in the building up of this picture?

Mr. English: Exactly so.

The Witness: Exhibit 6 reflects not only the cost of Edison, but also the amounts received by Edison from York Railways Company and the York Steam Heat Company.

By Mr. English:

Q. May I put it this way, Mr. McShea: Did you inquire what Edison would have to pay for an equivalent amount of power if it were obliged to purchase it? The power I have in mind is that which is incident to the production of steam?

A. If you will allow an assumption I can answer that. I as-

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sume that they would purchase energy, electricity from the source from which they now purchase electricity, that is from Holtwood and Safe Harbor.

By the Commissioner:

Q. Did you say assume that Mr. McShea, because this source of power has ample additional supplies of power from which they could buy that quantity of power, on that assumption? A. Well, on the assumption that these sources have the supply.

Q. Have an additional supply beyond the amount they now purchase? A. That is right. As a matter of fact—

Mr. English: That is a perfectly fair assumption.

Mr. Miller: I think Mr. English's question is based upon an unjustified assumption, because he is assuming that the Edison Electric Company will no longer be able to get its power from the Steam Heat Company so long as they can get it from the Steam Heat Company at that rate I think that is the rate which should be considered.

The Commissioner: At what rate?

Mr. Miller: Well, the cost to them.

The Commissioner: The cost to the Steam Heat Company?

Mr. Miller: No, the Edison. Mr. English has asked if other sources were investigated, as I understand it, other sources of power.

The Commissioner: Let me understand the picture we are trying to get clear here. There is the Edison Light and Power Company and the York Steam Heating Company—

Mr. English: Right.

The Commissioner: That is correct. In addition to some other companies. Now, the Steam Heat Com-

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pany, which is owned in this general pot of control, generates steam for one thing.

Mr. English: No, it sells steam, but it is generated by the Edison Company.

The Commissioner: But it is sold to the Steam Heat Company?

Mr. English: Right.

The Commissioner: At cost or a little more than cost, or less than cost. Then the real picture is, in the generation of that steam by the Edison Light and Power Company they produce a certain number of kilowatt hours also of electricity.

Mr. Miller: That is correct.

The Commissioner: Now certainly the cost of producing that "some" amount, the cost of producing that amount of electricity is a proper charge for the Edison Light and Power Company, and certainly some charge for the facilities, a reasonable amount, for producing that amount of electricity should be made. Now, isn't that the picture that we are trying to clear.

Mr. English: Exactly so, and place in the rate base.

The Commissioner: A proper amount.

Mr. English: A proper amount.

The Commissioner: Yes, as I see it.

Mr. English: What I am trying to develop from the witness is the extent to which he took these factors into consideration in undertaking to eliminate from the rate base what is called the Steam Plant.

The Commissioner: It seems to me elementary, I am not an engineer or accountant very unfortunately, but it seems to me that if the Edison Light and Power produces any amount of electricity with whatever facilities, whether it is the Steam Heat Plant kite, or whatever it is, for that amount of electricity produced they certainly have a right in a rate base to some figure of

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value on the property that produces that part of the electricity they use—some figure, I don't know what it is, or what it should be yet.

Mr. Miller: That is true, Mr. Commissioner. If the Edison Company needs the power generated in the production of steam, but if—

The Commissioner: If that is the proper setup, but if Edison Light and Power Company can purchase all of its power at a less figure than it would cost to produce it that is a thing that ~~we can show~~ and properly show. If Mr. McShea has an answer he can make it at this time.

The Witness: I think I have finished.

By Mr. English:

Q. You testified I think this morning, Mr. McShea, to some additional taxes that were not taken into consideration by you. I have particular reference to Page 71: You didn't refer, unless I am mistaken, to the new Federal Capital surplus tax, did you? A. No sir, I have not referred to that any place.

Q. I think you will agree that that was to be a source of some expense to such corporations as the respondent here, if they are fortunate enough to have that surplus. I mean that tax should be added to the others? A. I am not so sure about that.

By the Commissioner:

Q. What was your answer? A. I am not so sure about that.

Q. What do you mean by that answer? A. You are speaking of the tax on undistributed profits, is that right?

Mr. English: Yes.

The Witness: The experience of this company has been that they have a sufficient amount of dividends

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each year, which if continued in the future will eliminate the necessity of paying such a tax.

By the Commissioner:

Q. Mr. McShea, isn't it a fact that that tax applies to surplus only above a certain amount? A. That applies to a certain portion of the undistributed earnings in a given year.

The Commissioner: If there was only an undistributed amount of earnings of \$10,000, would that be tax exempt. As I understand that tax it does give exemption to some minor degree at least.

Mr. English: I think there is an exemption.

Mr. LaBrum: Not under the new act, there is absolutely no exemption of the undistributed earnings. You must pay all your earnings or pay a tax on undistributed surplus.

The Commissioner: Every company?

Mr. LaBrum: That goes even if you have a deficit in your capital account.

Mr. Miller: There is a serious question whether the rate payers of the company should bear that tax or whether the stockholders should bear that tax. You must have certain working capital, and that is a tax on your working capital under the new act.

The Commissioner: That is exactly what I was getting at. I thought that under this act that there was a certain flexibility which gave to a company some amount of working capital that would not be taxed, as an incentive to good management, but perhaps I am wrong.

Mr. LaBrum: Not under the new act. The purpose of the act was to force distribution of all earnings.

Mr. English: I am merely trying to bring out from

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the witness that that is one tax which you didn't take into consideration.

The Commissioner: The witness takes the position that it may very well be that the tax should not be borne by the consumers of the company but by the security holders.

Mr. LaBrum: That is a wrong assumption, because if it is distributed to the security holders there will be no tax.

Mr. Miller: This is not the time to argue that question.

The Commissioner: I am still wondering whether that is the witness' position.

Mr. English: After all that is all we are trying to develop.

By Mr. English:

Q. My colleague has inquired as to whether you have read the act and are really familiar with it?

The Commissioner: As I understand it does not make any difference what the act says. The act has nothing to do as to how any item should be charged against the company or not charged against it in a set-up of the rate base.

Mr. LaBrum: This is a tax that has to be paid by the company. It is part of its operating expense. If he is testifying as to the taxes that the company may have to pay he is not including in it one of the most important taxes, and one of the highest taxes that there is assessed against the company.

The Commissioner: Mr. LaBrum, the witness testified, as I understand it, not on the agency paying the tax, but where it should be properly and finally charged.

Mr. LaBrum: Ask him that question.

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The Commissioner: He said he thought there was a real question as to whether the consumer should bear the tax or the stockholder.

Mr. Miller: I would request that the respondent's counsel ask the witness questions and receive the answers and not comment on the record. It is drawing this record out to inordinate length, it seems to me.

The Commissioner: Proceed.

By Mr. English:

Q. Now, Mr. McShea, on Page 159 of your testimony you have a figure of \$267,514.68, to which you refer as consumer contributions. Is that amount included in the Day and Zimmerman appraisal to which reference was made at the last hearing in any form of property? A. I believe the property was included, but of course I don't know in what amount.

Q. Could you take the exhibit and find the property? A. Me?

Q. Yes. A. No, I couldn't do that.

Q. Where do you get the figures? A. From the company's office.

Q. Was that the amount you get from the company's office \$267 some thousand dollars?

The Commissioner: Let us get to the exhibit from which it was made up. Exhibit 22, I believe.

The Witness: The entire amount was developed from records in the company's office.

By Mr. English:

Q. What were the records? A. Mostly records kept by Mr. Saltzgeber in the new business department.

Q. Is there any ledger account by that name? A. Donated capital?

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Q. Yes. A. No.

Q. Where did you get the phraseology? A. I received, obtained the phraseology from the amount included in the reserve for renewals and replacements that was ear-marked by the company as donated capital.

Q. What was the amount you found on the company's books? A. In the reserve for renewals and replacements as credited on June 30, 1936 the amount was \$154,859.78.

Q. Then how did you arrive at this figure of \$267,514.68? A. Well, the company furnished us with a series of statements in 1934 showing that the donated capital as of October 31, 1933 amounted to \$231,374.

Q. Who furnished you with that information? A. It was either Mr. Keesey or Mr. Wayne.

Q. Now, isn't it a matter of fact, Mr. McShea, that that amount merely represents an estimate as to the aggregate amount of what you call consumer contributions? A. You mean \$267,000?

Q. Yes, sir. A. Well, the \$231,000—

By the Commissioner:

Q. Mr. McShea, don't these tabulations that you have picked up on the first page of Exhibit 22, doesn't that give the names of the persons where the lines are constructed and the amount of capital which reconcile this figure? A. I was just about to say as far as I know, and I think I know a good deal about it, the \$267,000 figure is a statement prepared in my new detail from the records of the company's office, and with the assistance of company employees and supported by individual items making up the amount. I certainly don't think it is an estimate.

By Mr. English:

Q. Well then, as I understand you, this figure of \$267,000 and a fraction represents what you call consumer contributions as of June 30, 1936? A. That is right.

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Q. Based entirely upon information that you received from the company officials, is that right? A. Based entirely upon information developed from the company's records and files.

Q. Did anybody give you that precise figure of \$267,514.68 representing what you call consumer contributions as of June 30, 1936? A. That figure was arrived at by myself.

Q. I am sorry, you can answer that question yes or no. A. Did anybody give it to me? No, that is right.

Q. No one gave it to you? A. No.

Q. Then this figure you made up yourself, didn't you? A. That is right.

Q. How did you do it?

By the Commissioner:

Q. Now, Mr. McShea, the first figure on the first sheet, \$231,000, that figure relates solely to the tabulation that you give by name and address of persons, the consumer, and the amount relating to that consumer, doesn't it? The sheets back of it? A. That is right.

Q. In other words, you have the full and complete detail as to the \$231,000, do you not, backed up in this exhibit? A. That is right.

Mr. English: That is Exhibit No. 22, Your Honor.

The Commissioner: \$231,000 is backed up by the eleven or twelve sheets—well, not twelve, but ten sheets back of it, and then you have additional sheets back of that, substantiating the other figures added to the \$231,000, do you not?

The Witness: That is right, the name of the person affected.

By Mr. English:

Q. Did you get the information as to names and amounts shown in Exhibit 22 from the books of the company? You

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may answer that yes or no and then explain. A. Not from what you call the general books.

Q. From what books did you get it? A. Mostly work sheets or folders and files kept by Mr. Saltzgeber in the new business department, and from other information contained in the general accounting office under Mr. Ludwig. In the preparation of this Exhibit we were in touch not only with Mr. Saltzgeber, but Mr. Steese, or one of the Steeses, Mr. Serriett and Mr. Houck, his assistant.

Q. Did the work sheets show the amounts? A. Of course, we didn't pull those amounts out of the air certainly—

Q. You don't mean to answer me that way. Either they did or they didn't. A. There is a work sheet or paper of some sort in the company's office to support every one of these amounts.

Q. Every one of the amounts? You are perfectly certain of that, are you? A. If you can show me where I am wrong I will be glad to admit it, of course.


By the Commissioner:

Q. Mr. McShea, I think Mr. English is entitled to the correct answer on these various papers of all kinds that you were able to locate in the various offices of the company, were their figures there in the exact amount for these persons as you put them down here, the various figures going to these various persons, in total making these various amounts. Did you have to include from tables other figures or estimates or anything else in the company's records, did you have to calculate this amount or did you find somewhere each one of these amounts given, which in sum total made up these given amounts? A. We found each one of these amounts in the company's office.

By Mr. English:

Q. May I call your attention to Exhibit 22, Sheet No. 1, where you say lines financed by customers and donated to re-

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spondents to October 31, 1933 as shown by statement prepared by respondent, a copy of which is attached. Sheets 2 to 10 inclusive, in the sum of \$231,374.84, and then ask whether you found work sheets or other memoranda in the records of this company showing the particulars of that \$231,000. You may answer that yes or no. A. Will you repeat the question.

(Last question read.)

By the Commissioner:

Q. In answering that question are you looking at Exhibit 22? A. Yes.

Q. The first item on the first page is the item that Mr. English just read? A. That is right.

Q. That item is backed up as I understand it, tell me if I am correct, in the tabulation on Sheet 2 which arrives at a figure of \$231,000, is that right? A. That is right.

Q. And that Sheet 2 is backed up by the detail of names and amounts in most cases addresses from Sheets 3 to 10 inclusive? A. That is right.

Q. Now, will you answer the question? A. It is pretty hard to answer that yes or no.

By Mr. English:

Q. Why? A. I will answer it, yes.

By the Commissioner:

Q. Explain it if you want to. A. First of all I would like to explain that what I call the original schedule was submitted to us by Mr. Keesey or Mr. Wayne in 1934 as being a record of the company.

By Mr. Keesey:

Q. May I ask how much that was? A. \$231,374.84.

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By the Commissioner:

Q. That is this first figure on the exhibit to which you refer? A. Now, we took up the work at York, we made test checks on the amounts contained in this exhibit, and we checked a good many of them and went back to the records of Mr. Saltzgeber and others, and we did check out these identical amounts that appear in there.

By Mr. English:

Q. Perhaps I didn't make my question clear, Mr. McShea, did you find supporting data for this entire \$231,000 in the form of work sheets or other memoranda in the records of the company? A. You want yes or no to that, I suppose.

Mr. Miller: Answer yes or no and then explain.

By Mr. English:

Q. Oh, yes, you may explain in any way you like; but I think we are entitled to a categorical answer. A. What was the question?

(Last question read.)

By the Commissioner:

Q. Let me interject there, enlarging the record much to Mr. Miller's disgust, Sheets 3 to 10 added together in amounts bring you to \$231,000, is that correct? A. That is right.

Q. Now, did you get from the company's books or records in any way these items in these amounts listed on Sheets 3 to 10? A. Yes sir.

Q. All of them? A. All of them.

By Mr. English:

Q. In the form of work sheets? A. Limited only as to the extent to which we made the test check.

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Q. To what extent did you make a test check; how many items did you test?

By the Commissioner:

Q. Where did you get the item from in the first place to test? Are these Sheets 3 to 10 data that was given you by Mr. Keesey originally? A. Yes sir.

Q. It was? A. Yes sir.

Q. That is what they are trying to get at. Mr. Keesey gave you this data on Sheets 3 to 10?

Mr. Keesey: That is not correct. Mr. McShea won't say that.

The Commissioner: He did say it.

By Mr. Keesey:

Q. You don't mean, Mr. McShea, that I gave you the data on Sheets 3 to 10? A. What I mean is that you handed the schedule to me.

Q. This schedule? A. Not this schedule, but the original from which this was copied.

By the Commissioner:

Q. Giving the names and amounts of each person? A. Yes sir, here it is.

By Mr. English:

Q. Do you have the original schedule with you? A. Yes sir.

Q. All right, let us see it.

(Witness handed schedule to counsel.)

By the Commissioner:

Q. Then as I understand it, according to your statement, you were given a tabulation by Mr. Keesey which is copied out

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accurately on Sheets 3 to 10, bringing it to \$231,000.00, then you spot checked that against the books and records of the company? A. That is right.

The Commissioner: I am not trying to put words in the witness' mouth. I am simply trying to find out what exactly did happen.

Mr. English: Our theory is, if your Honor will bear with an enlargement of the record, in the last analysis these things are mere estimates that don't represent actual expenditures.

The Commissioner: If Mr. McShea is right, then the estimate was made by Mr. Keesey or somebody for him, and that he then spot checked that against the company's records, and found wherever he spot checked it to be accurate.

Mr. Miller: Mr. Commissioner, I understand also that when this investigation was started, to prepare for this case, that a copy of the statement which Mr. Keesey had given to Mr. McShea was presented by Mr. Ludwig of the company and that that statement coincided with the statement presented by Mr. Keesey.

Mr. English: Is that testimony.

Mr. Miller: I am just enlarging the record a little bit.

By Mr. English:

Q. On Page 160, however, you said that the amount recorded on the books as of June 30, 1936 was \$154,859.78. That is correct, is it not? A. That is correct, recorded in the reserve for renewals and replacements account.

Q. Of course, you would not be able to segregate this donated property from the Day and Zimmerman appraisal, would you? A. No sir.

Q. As I understand your testimony I think you made it clear

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that in your judgment at least what you call donated property should not be included in the company's rate base. I only referred to the matter because you said that in substance? A. That is right.

Q. I am just wondering whether you would mind giving us your reasons for it? A. The reason that I don't believe that the customer should be required to pay a return on property that was paid for by himself.

Q. Did you inquire as to the extent to which this property is actually owned by the company? A. Oh, yes.

Q. It is all owned by the company, isn't it? A. I think except in a few scattered instances where I think somebody built. Occasionally the question of title came up and they had difficulty straightening out the customer, but substantially all of it is owned by the company.

Q. The amount involved in such matters would be inconsequential? A. Yes.

By the Commissioner:

Q. Mr. McShea, I understand your position to be that no matter who has title to that amount of equipment or property, if the customer paid for it, paid for it since installation, he should not be required to pay in his rates a return on that amount of property, is that correct? A. That is correct.

Westinghouse Electric Light and Heat and Power Company, 11/18/08, produced and marked Respondent's Exhibit No. 1, E. E. M., 12/9/36.

By Mr. English:

Q. I call your attention to Respondent's Exhibit No. 1, which for identification is marked Westinghouse Electric Light Heat and Power Company, 11/18/08, and ask you whether you examined the item called "construction" on Page 1? A. Yes sir, I examined that.

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Q. Do you remember what your original cost, as you use that phrase, or misuse it, as the case may be, was in connection with the Westinghouse property? A. At what time? At the time it was sold to the other company?

Q. At the time it was taken over by Edison? A. In 1908. I used the figure \$32,214.78.

Q. What is that figure under construction? A. There is no balance in the account as it was closed out.

Q. Isn't there a figure, a total under this item of construction of \$66,420. Let us not quibble about it. (Handing book, marked Respondent's Exhibit No. 1 to the Commissioner).

A. The open balance there is that amount, yes sir.

Q. Under the item of construction in a book of original entry, of that much, and yet you undertake to tell us that the original cost of that property was thirty-two some odd thousand dollars. Do you still stand on that testimony?

A. I stand on that testimony.

Q. All right.

By Mr. Miller:

Q. Explain it. A. The Westinghouse Company had no books prior to December 31, 1901. At the time this entry was made the entry was \$66,537.86. Now, from the books and reports for the year 1901 we find a combined property account, including equipment, real estate and buildings, and these items total \$31,097.29. At that time the profit and loss balance was \$6,091.66. In the 1902 tax report the property is shown at \$66,537.86, the amount just referred to from the ledger, but the profit and loss account went up from \$6,091.66 to \$40,433.13.

By the Commissioner:

Q. What caused that ballooning? A. It was not caused by earnings that year, because that amount as shown by the tax report was \$4,084.57, so the only conclusion I could come to was that there was a write-up in the property account.

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By the Commissioner:

Q. The 1902 report showed what at the beginning of the year? A. I don't think they showed a balance at the beginning of the year.

Q. What did they show at the end of the year? A. The tax report for 1901 showed \$23,097.29 for cost of equipment; \$8,000 for real estate and buildings, and 1902—

Q. What was the total? A. \$31,097.29. Now, in 1902 the only amount is shown at \$66,537.86.

Q. And despite the grand total in that year the earnings shown for that year were what, four thousand some dollars? A. \$4,084.57.

Q. So that the maximum in your opinion for the end of that year was the same for the end of the year previous plus the net earnings, is that right, roughly? A. Roughly you might come to that conclusion.

Q. And not an addition of almost ten times, is that right? A. That is right.

By Mr. English:

Q. Well now, in what you said about handling these tax reports I assume that you adopt the same method in arriving at what you call the original cost of these different constituent companies, do you not? A. In the case of the Peoples Company I attempted to come to the figures shown on the balance sheet for April 11, 1894.

Q. Did you pay any attention to the sworn statements of the officers filed with the tax officials as to the value of their assets from year to year? A. The tax reports contained no information showing the cost or value of the property.

Q. In no instance? A. Not as far as I know.

Analysis of book figures and figures obtained from capital stock reports, Westinghouse Light Heat and

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Power Company, produced and marked Respondent's Exhibit No. 3, E. E. M., 12/9/36.

By Mr. English:

Q. Exhibit No. 3 shown to the witness. Just describe Exhibit No. 3 to the Commissioner.

The Commissioner: Whose exhibit is that?

Mr. English: That is ours. I don't mean to offer these, but I want the benefit of the witness' judgment as to what it contains.

The Witness: This is entitled an analysis of book figures and the figures obtained from capital stock reports, that is the heading.

The Commissioner: Who made the analysis?

Mr. English: One of our witnesses. I was about to ask him the question whether the figures shown on this exhibit correspond with those he found in his tax reports.

The Witness: I beg your pardon, on my previous answer. You are speaking now of the Westinghouse Company?

By Mr. English:

Q. Yes. A. I was speaking of the Peoples before.

Q. Then may I ask you this question: The Westinghouse reports did show from year to year the estimates of the officers as to the value of their property, isn't that right? A. Of course, I assume the officers supported their tax reports.

Q. That is not answering the question. The reports did or did not show that information. You said you saw them. You said very positively at the last hearing that you examined them carefully. A. This contains information as to the fixed capital as shown by our Exhibit No. 23. It also has a column

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AFTER RECESS

R. A. McSHEA, JR., recalled.

Cross Examination

By Mr. English:

Q. Mr. McShea, did you see the minute book of the West-
inghouse Company? A. Yes sir.

Q. Did you happen to notice the statement of resources
and liabilities in the minute book as of December 31, 1893?
Do your notes help you in that respect? A. As of December
31, 1893?

Q. Yes sir. A. Yes sir.

Q. And did you notice under the item of resources a plant
account in the sum of \$43,447.87? A. I did.

Q. Consisting of electric plant, \$11,045.85? A. Yes.

Q. Steam plant, \$14,558.73? A. That is right.

Q. Buildings, \$4,187.85? A. Yes.

Q. Pole line account, \$8,005.09? A. Right.

Q. Meters, \$946.35? A. Right.

Q. Land, \$4,704.00? A. That is right.

Q. Cash, \$250.33? A. Yes.

Q. And under that expenses, \$7,594.91? A. Yes.

Q. Supplies, \$2,954.35? A. Right.

Q. Accounts receivable, in the amount of \$498.34? A.
That is right.

Q. Making a total of \$54,745.80? A. Now, all of those are
not assets, of course.

Q. I am merely asking you as to the figures. You found
them in the minute book. A. Yes sir.

Q. As of the close of business December 31, 1893, is that
right? A. That is right.

Q. In this same connection didn't you find that in the year
1897 there was a reduction of fixed capital in the sum of
\$12,119.87? A. I can give those to you from the tax reports.

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Q. I beg your pardon, sir. A. I will have to give those to you from the tax reports.

Q. Didn't you get this information from the books of the Edison Company? A. You asked about the Westinghouse Company.

Q. Westinghouse Company, I should have said. A. No, there were no Westinghouse books until about 1901, or so.

Mr. Keesey: That is the new book that was found.

By Mr. English:

Q. That is one of the two books we brought in this morning? A. I never saw that book until this morning. Shall I give you those figures from the tax reports?

Q. We would prefer to have them from the books of the company? A. I will have to work that up and submit it then.

Q. I appreciate the fact now that you have not had an opportunity to examine the books. Assuming that there was a write-down—may I invite your inquiry, Mr. McShea, into that particular question between now and the next convenient time? A. Yes sir. The question is?

Q. As to a reduction in fixed capital of \$12,119.87 in the year 1897 and to an increase in the year 1899 to \$28,739.00 making the column total of fixed capital \$65,918.84, which compares with \$66,537.86 on December 31, 1901. Do you know when the Westinghouse Company business was taken on to the York Company business? A. The property was sold in 1908, but I believe for several years prior to that time the property was actually operated by the Edison Electric Company.

Mr. Miller: May I ask just what you want Mr. McShea to do. Do you want him to take these two books that have been found and to examine them and see how they check in with his testimony, and correct his testimony in accordance with the books?

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Then in 1908 as shown by the ledger, which has just been presented, the balance shown on December 31, 1903 was \$66,420.80. There were no other entries in the account from 1903 until 1908 when three credit entries were made; credit for concurrent charge to profit and loss \$40,073.84, cash from draft \$1.96, cash \$26,345.00. Now, that had all the appearance to me of crediting in 1908 a write-up that was made in 1901.

Statement, capital stock and indebtedness for the year 1893, Westinghouse Light Heat and Power Company, produced and marked Respondent's Exhibit No. 2, E. E. M. 12/9/36.

By Mr. English:

Q. I ask you what that report shows as to the assets of the company as of that year? A. The cost of Red Lion \$8,005.09; cost of equipment \$25,604.58; real estate and buildings \$4,187.85.

Q. What is the total? A. Then cash and current assets \$103.20; profit and loss \$3,129.22; total \$41,029.94.

Q. You saw that report, didn't you, in connection with determining the original cost of this property? A. Yes, sir.

Q. And, of course, you were uninfluenced by the statement of its assets and liabilities in deciding that the original cost was something like \$35,000, I take it, is that right? A. I was not influenced by the assets as listed in that capital stock tax report.

By the Commissioner:

Q. Why not? A. Well, at the last hearing I showed in my testimony that the plant accounts as reflected by the tax report fluctuated so much from year to year, not every year, but every few years there were quite violent fluctuations in the amounts, and starting off from that, including our plant ac-

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counts actually shown by the reports I didn't think I was getting the correct answer.

Q. What I am trying to get at is: Here is a report of 1893 showing \$41,000 of assets. The you come down to that book, what year is that book entry, the first entry balance, Mr. McShea? A. \$66,000.

Q. What year is that? A. 1901.

Q. 1901, which is eight years later, is that right? A. That is right.

Q. That shows \$66,000 as compared to the \$41,000 in 1893, but you arrived at a figure considerably less than the \$41,000 of 1893, why is that? A. I explained a few moments ago about the increase in the profit and loss balance from 1901 to 1902. Now, there is a write-up, not an increase, which could not possibly have been accounted for by the earnings, and that is part of this \$66,000.

Mr. English: I think the exhibit shows, as has been suggested, that in spite of these entries in this same year, 1893, the witness starts out with an open entry of less than \$25,000.

Mr. Miller: That figure does not appear.

Mr. English: The figure does not appear under the statement of the witness, that is what we have in mind. If we are going to talk about original cost from anybody's viewpoint it does seem to me that this would have been the fair approach.

By the Commissioner:

Q. What year is that? A. Sometime between the first Monday of November, 1901, and the first Monday of November, 1902.

By Mr. English:

Q. That would appear on what year's report? A. 1902.

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headed "fixed capital" as determined by an examination of the company records. Of course, I don't know who did that.

Q. You are referring now to the exhibit? A. Respondent's Exhibit No. 3. The third column shows the difference between the Public Service Commission's Exhibit and book records, and then blocked off is the information headed from capital stock tax report.

Q. I think I might bring the matter to a head by asking whether between now and the next adjournment you will be good enough to check over a copy of this exhibit if we furnish one to you. A. Oh, absolutely.

Mr. Miller: For what purpose?

Mr. English: For the information of the Commission. It is a compilation of matters that either you have to put in or we will.

The Commissioner: What do you want him to check your exhibit for, as to accuracy, or what?

Mr. English: As to accuracy, yes. He has examined these tax reports, he says.

The Commissioner: I think your exhibit as to accuracy should be checked by one of your own witnesses rather than asking our witness to examine one of your exhibits for accuracy.

Mr. English: When we come to put it in there is no question about that. In the meantime we would like the benefit of the opinion of your representative as to whether there is any question as to the correctness of the figures as they appear there.

The Commissioner: Isn't it a little unusual for you to put in an exhibit, or rather hand the Commission's witness an exhibit and ask him to testify as to the accuracy of it before you introduce it in direct testimony?

Mr. English: I don't think so, Your Honor. I can ask him later, it is just a question—

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Mr. Miller: We are perfectly willing, Mr. Commissioner, to check the figures as to which we have information as those figures appear upon documents which Mr. McShea has examined. Of course, we cannot check the estimates of figures which appear in the exhibit as obtained from records of the company or placed in the exhibit by representatives of the company.

Mr. English: My understanding from the witness' testimony is that he has examined both the books of the company and the tax reports.

The Commissioner: But he has not examined this exhibit. Now, you want him to relate the exhibit to the figures found in the tax reports and the company's records, is that right?

Mr. English: Of which he has copies. This is merely for the purpose of disposing of any question as to accuracy between us. They may be wrong, I don't know, I have not seen them myself, but we are doing in this connection precisely what your counsel did in sending us exhibits to be checked over.

Mr. Miller: The purpose of sending those exhibits, Mr. Commissioner, was so that the respondents would be ready for cross examination on the exhibits, not checking the accuracy of the exhibits.

The Commissioner: Check it over. We will see what we will see.

Mr. English: I don't assume that it will involve a very large amount of work because the records according to the witness are available.

I think if Your Honor would care to take an adjournment at this time we might save time later.

The Commissioner declared a recess until 1:30 o'clock P.M.

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Mr. English: We are submitting the books, Mr. Miller, as we have everything else. I think we told Mr. McShea that he had everything. Now then, the books are available for any purpose that he may regard as suitable.

Mr. Miller: You asked him the specific question if he would examine the books and see whether certain figures appeared there.

Mr. English: I would appreciate his doing that, in addition to any other use he cares to make of them.

Mr. Miller: In preparation of further cross examination?

Mr. English: Exactly so.

By Mr. English:

Q. Was the York Electric Light Heat and Power Company a holding company for the Westinghouse and the Edison? A. That was my understanding received from the Company officers.

Q. And that happened sometime during the year 1899. Could you help us in that respect? A. It was in 1899 property accounts were transferred to the books of the York Light Heat and Power Company, and it was from some time in 1899 to the close of 1901 that the operations of this Company were reflected on the books of the York Company.

Q. Of the York Company. And the Westinghouse figures, of course, were taken on to the York books? A. That is right.

Q. At what figure did you find them taken on the York books? A. \$69,277.00.

Q. What were the additions between 1897 and 1901—between 1897 and 1899? A. July 1, 1899, \$5,760.86.

Q. Now, Mr. McShea, I want to call your attention to your Exhibit No. 6; on Page 45 of the record you were asked by Commission's counsel, have you made an analysis of the cost

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of production and purchase of electricity by the respondent as shown on the books from the records of the Company, and you said that you had. In that connection may I ask whether you personally prepared that exhibit? A. Exhibit 6?

Q. Yes. At any rate, it was done under your supervision? A. That is right.

Q. Do you have the exhibit before you now? A. Yes, sir.

Q. On Page 20 there is a statement entitled, statement of the cost of electricity purchased for the period from January 1, 1931 to June 30, 1936? A. That is right.

Q. What does the amount shown under the heading Metropolitan Edison Company, that is, column "D" represent? A. It represents the amounts paid by respondent to Metropolitan Edison Company for electrical energy.

Q. For the years 1931 to 1933 inclusive? A. 1931 to 1936, June 30, 1936, inclusive.

Q. Would you mind reading us the figures—they are very brief, Your Honor—for 1931, 1932 and 1933? A. 1931, \$312,275.50; 1932, \$290,036.18; 1933, \$213,027.94; 1934, \$143,735.49; 1935, \$182,869.67; 1936, the first six months, \$161,199.95.

Q. Can you tell us whether these amounts represent gross or net payments made by the Edison Company to the Metropolitan Edison? A. Those are the amounts paid and charged to the company by Account 413, power purchased.

Q. As far as you know they were gross amounts and represented during the period indicated actual gross disbursements made by Edison to Metropolitan Edison, is that right? A. For the purchase of electricity.

Q. Yes, exactly. A. Yes, that is right.

Q. Did you make any inquiry or examination for the purpose of determining whether any discount was allowed to Edison Company by Metropolitan?

The Commissioner: Discount from those sums.

Mr. English: Yes sir. Credits under the terms of

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the contract. To make plain our position, Your Honor, under the terms of the contract with Metropolitan Edison there is a credit.

Mr. Keesey: I am not sure that that particular contract is in evidence. They only introduced the last one.

Mr. English: I think that is correct.

Mr. LaBrum: That is in evidence in the York Railways case.

Mr. English: There was a credit allowed in 1931, 1932 and 1933 which will reduce the amount that is charged against us as power purchased.

The Commissioner: If the amount charged against you for power purchased has been reduced then by that same sum the other amount is greater.

Mr. English: Except that this is used for allocation between the steam and electric properties.

The Commissioner: What I meant, as to your general picture of net revenue, any deductions you get from Metropolitan from those figures increased the amount of net revenue.

Mr. English: No question about that. We are letting the chips fall where they will.

The Commissioner: Are those amounts appreciable in size?

Mr. English: Yes, if I may say so, in 1931 they amounted to \$32,437; 1932, \$31,915, and for the eight months of 1933, \$21,300.

The Commissioner: Where are those items reflected on the books of the company?

Mr. English: Reported under non-operating revenue.

The Commissioner: Those items of non-operating revenue as you have them are taken into consideration in some of our exhibits, are they not?

Mr. English: No, sir, they are not, that is the reason

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I am going into this question. Mr. McShea's exhibit is built upon the gross amount.

The Commissioner: Are there anywhere in these exhibits items showing your non-operating income that reflect those items?

The Witness: Exhibit 15.

Mr. English: Sheet 1, that is right.

Ledger A, Edison Electric Light Company, York, Pennsylvania, November 1887 to November 1899, produced and marked Respondent's Exhibit No. 4, E. E. M., 12/9/36.

By Mr. English:

Q. Respondent's Exhibit No. 4 shown to the witness. Mr. McShea, did you have occasion to examine this book which is called Ledger A, Edison Electric Light Company, York, Pennsylvania, November 1887 to November 1899? A. Yes, sir.

Q. Did you happen to notice an account on page marked 399 in connection with or as part of this book? A. Yes, sir.

Q. You did see that account, did you? A. Yes, sir.

Q. Did you pay any attention to it in connection with estimating the original cost of this property? A. No, sir.

Q. It is marked miscellaneous assets, is it not? A. In that book it is, yes.

Q. I am reading from the book. It is dated June 30, 1897, and there is the phrase "stock issued \$8,000, cash 12?"

A. May I see the book? I don't doubt your word.

Q. Yes. (Handing book marked Exhibit No. 4 to witness).

A. May I look through the book?

Q. Oh, certainly. A. That is right, there is.

Q. I think you told me you gave it no consideration in your estimate of original cost on this property? A. The reason for that was that we prepared trial balances at every closing beginning November 1, 1887 and continuing until the

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closing of the book, and then we went into the next book, and we found—we balanced the account, assets against liabilities, without taking that account into consideration and it appeared to us that that was some kind of memorandum account kept by the company that did not belong to the general setup.

Q. Now, in your Exhibit 23, and I will ask your attention for a moment to Sheet 2, you have an item of \$2,448.24?
A. Yes, sir.

Q. Now, was not that amount debited to construction by Edison Light and Power Company as shown by "A" ledger of December 31, 1889?

The Commissioner: What amount are you talking about?

Mr. English: \$2,448.24.

The Witness: That is right.

By Mr. English:

Q. And doesn't that amount actually represent interest paid on interest bearing certificates that were issued by the company for loans, for construction purposes, and therefore, is in the real sense of the term interest during construction?
A. I didn't so consider it, because I didn't know that at the time.

Q. You didn't know that fact? A. That is right.

Q. You were not familiar with the fact that under date of October 1, 1885 the company had an outstanding issue of interest bearing securities for construction purposes? A. 1885?

Q. Yes. A. The first ledger I saw was dated 1887.

Q. I see, I call your attention now to Exhibit 23, Sheet 2, which contains an item of \$9,562.04, Edison Light and Power Company. Was there anything about that to indicate that it represented license payments to the Edison Electric Light Company of New York, totalling \$18,200?

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The Commissioner: What do you mean by licensed payments?

Mr. English: This was the original Edison Company, your Honor, and most of those companies were obliged at that time to pay license fees for the right to the use of the name?

The Witness: There was an account on the balance sheet, or in the general ledger, entitled, Edison Electric Light Company of New York for stock \$18,200.

By Mr. English:

Q. Did that cause you to make further investigation as to the circumstances surrounding it? A. We inquired of Mr. Ludwig. Naturally an item of this kind, that is a question of a foreign security, and if distributed somewhere else we would like to know at the time the examination was made just what it was and why it was distributed that way.

Q. Did you receive any information through any of your associates as to an agreement which provided for the payment by the York Edison Company of York of 30 percent of its outstanding capital stock at the time of the agreement and 30 percent in additional capital stock to be issued, and for the payment of 5 percent in cash of the then outstanding capital stock which was \$40,000, and appears on Page 41 of that same ledger, ledger "A"? A. I didn't know anything about that agreement at all, and still don't. Of course, we inquired of Mr. Ludwig and he seemed to know nothing about it.

The Commissioner: I suppose this was a good act in a great number of companies at that time.

Mr. Downes: There are only two in existence today.

Mr. Miller: I don't believe you identified by Exhibit number that contract. You do propose to submit it in the record in some form?

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Mr. LaBrum: Let him repeat the answer that he makes. He may perhaps offer a substitute.

The Commissioner: You can reach that in other ways than in discussion with Mr. Miller. The witness has said that he has answered to the best of his ability. You can handle that in whatever way you like in your argument or by other witnesses or anything else that you want to offer, if you have any further questions to ask him, all right but I don't see that it solves anything or brings about any useful result asking him the same questions over after he says, "That is all I have," and that is what he does say.

(Remarks by Mr. English at his request off the record.)

By Mr. English:

Q. On Page 174 you testified to making some adjustments in figures. We were talking about Exhibit 23 at that time?

A. Yes, I believe so.

Q. That is the exhibit that has these lettered columns as I call them? A. They all have.

By the Commissioner:

Q. Is this about the donated sums? A. No, this is estimated original cost.

By Mr. English:

Q. You said you made some adjustments in the figures when we were interested in the inquiry as to the source of the figures themselves. I want you to tell me what adjustments you made? A. Well, the adjustments that I made are shown on Sheet 2 of Exhibit 23.

Q. And those are the adjustments that you had in mind when you used that expression at the last hearing, am I right about that? A. Yes, I think you are right about that.

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Q. Were there any other or additional adjustments? A. In Exhibit No. 26, which was offered this morning, identified this morning, I have details showing how the figures were determined for the various companies, excluding however, the Edison Electric Light Company and the Merchants Electric Light and Power Company, which were taken from the books.

Q. Well, Exhibit No. 26 relates only to the Peoples Company, does it not?

The Commissioner: Turn over the pages, it is for different companies. A reconciliation, Westinghouse, Red Lion, York and Windsor.

Mr. English: Yes, I missed a page.

By Mr. English:

Q. Now, Mr. McShea, you have been using the expression in these exhibits and in your testimony, computation estimated original cost of the property. What is your conception of original cost? A. To me original cost means the cost of the property at the time of installation.

Q. At the installation of the physical units? A. That is right.

Q. Do you think that in the light of what you told us of how you assembled these figures, that that is a correct phase to use? A. Yes sir.

Q. You do? A. My efforts along that line were to determine as nearly as I could the actual original cost of the property wherever I got the information.

Q. By estimating amounts of capital stock issued— A. Where I felt that the property was built out of proceeds of capital stock issued.

Q. Were reports filed for tax purposes? A. Yes.

Mr. English: That is all for the present. There may be some other things later.

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By Mr. Miller:

Q. Mr. English just asked you whether you estimated capital stock. Did you estimate any capital stock? A. No, I estimated no capital stock figures.

Q. You obtained the definite capital stock figures and on them based your estimate of original cost? A. That is right.

Mr. English: Based his estimate on the amount paid in without regard to the outstanding stock, as I understand the witness.

The Witness: I say where I could, paid-in capital stock.

Mr. Miller: I have no further questions at this time.

Mr. English: Mr. Commissioner, Mr. LaBrum has just suggested that we are still investigating these figures. I assume that we will ask Your Honor to recall Mr. McShea for further cross examination. I don't mean to cumulate it at all.

Mr. Miller: That is perfectly satisfactory.

The Commissioner: On other points?

Mr. English: Precisely so.

By Mr. English:

Q. To make it perfectly clear, Mr. McShea, you don't mean to tell us that these exhibits that you submitted represent the original cost of the property of the Edison Light and Power Company in York presently used and useful in the public service, do you? A. No sir.

By Mr. Miller:

Q. The original cost which you have estimated and placed in the record in your testimony and referred to in your testimony consist of what you estimate the original cost to be at the date of installation of the property used by the companies which have become the Edison Light and Power Company, is

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that correct? A. I made no effort to eliminate from my estimates any figures representing or purporting to represent the cost of property not used and useful.

Mr. English: I assume that we both have considerable to say about that on another occasion.

By Mr. Miller:

Q. Mr. McShea, what companies owned the property, or what companies installed the property, the original cost of which you have estimated in this record.

The Commissioner: That is a large order, isn't it, to answer that question.

The Witness: You mean what were the original constituent companies.

The Commissioner: He meant who installed the property or else who owned the property.

By Mr. Miller:

Q. Yes, owned or installed it? It was not the respondent, in this proceeding who installed that property? A. Well, the respondent installed a great deal of it.

By the Commissioner:

Q. In later years? A. It was the respondent or its predecessors the Peoples, Westinghouse and York and Windsor and the Red Lion and the others.

The Commissioner declared a recess of five minutes.

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information. You had nothing before you but the tax report? A. The tax report in the files of the Secretary of the Commonwealth.

Q. Showing a statement in connection with the application for the charter? A. No, that was in connection with the Peoples Company.

Q. What did you find in the office of the Secretary of the Commonwealth with regard to the Red Lion Company? A. March 26, 1903 there was filed in the office of the Secretary of the Commonwealth papers concerning the increase of indebtedness from nothing to \$3,000. The date of the resolution of the Board of Directors was January 10, 1903. The Treasurer's return filed with the Secretary of the Commonwealth on May 19, 1903 certified that \$2,500 of additional indebtedness was issued for cash.

Q. And that information is the sole source of the opinion that you have expressed in your testimony, I take it? A. The examination of the tax returns and this information, that is correct.

Q. Now, in the Westinghouse Company you disregard the issue of \$30,000 of stock, and yet in substantially all these other companies you predicated your figures as to original cost precisely upon that information, didn't you? A. I wouldn't say that I disregarded anything.

By Mr. LaBrum:

Q. The York and Windsor, not the Westinghouse? A. I didn't disregard any of the information that I found. I tried to use whatever I thought would produce the correct result as nearly as could be obtained.

By Mr. English:

Q. And yet you have, I think, already told us, so far as York and Windsor is concerned you didn't take into consideration \$10,000 of capital stock, am I right about that? A. Not

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that I didn't take it into consideration, I took everything into consideration. I rejected the use of it.

By the Commissioner:

Q. And you gave your reasons for doing so? A. That is right.

By Mr. LaBrum:

Q. Why did you reject it? A. For the reason that the York and Windsor Electric Light Company was formed by merger and consolidation under an agreement dated April 1, 1905 between the Red Lion Electric Light Company and three non-operating companies. Of course, I found in making examinations that where a company is organized and capital stock is issued originally for property it is sometimes issued at a par value greatly in excess of the cost of the property, and since I was having an account for only \$11,650 here in the case of Red Lion I believed that there was not \$30,000 of cost value behind the issue.

Q. What led you to that belief. Did you examine the records in this case to find out whether or not the stock was issued far in excess of its actual value? A. I already told you that I have not seen the records of Red Lion because there didn't appear to be any.

Q. I am talking about York and Windsor. I am talking about the \$30,000 issued capital stock which shows on all reports of York and Windsor and ask you why you ignored that altogether, when you considered it in every other case but this one? A. I told you the reason.

Q. I want to know, did you examine this particular record to find out whether or not the reason which you gave existed in this case, to wit, that the capital stock sometime was issued greatly in excess of its value? A. That is right.

Q. Did you examine the record in this case to ascertain

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Mr. English: Oh, certainly. I assume we will do that when our turn comes. I would be rather glad to introduce it now, but I was afraid Mr. Miller would object.

By Mr. English:

Q. I call your attention now to Page 194 of your testimony, with special reference to your answer at the bottom of the page, where you say, according to the tax reports from 1907 to 1913 the capital stock authorized amounts to \$37,000 during the entire period.

The Commissioner: This is now the York and Windsor property?

Mr. English: That is right, sir.

By Mr. English:

Q. This referred to Exhibit 23, Page 1, where you say, further space provided for the amount of the paid in capital stock was blank from 1906 to 1911 inclusive. In 1913 the amount of paid in capital stock is shown at \$30,000. In 1907 the assets are shown as value of property in the amount of \$30,000. \$30,000 was again used in 1908. In the report for 1909 the cost of Red Lion was shown at \$20,000, the cost of equipment at \$15,000, and the real estate and buildings at \$2,000. In 1910 the cost of Red Lion was shown at \$7,000, cost of equipment at \$7,500, and the cost of real estate and buildings at \$1,500. Now, in 1909 the property values as shown by the capital stock reports changed or decreased from \$37,000 in 1909 to \$27,000 in total in 1910. While personally I didn't think there was a decrease in the cost or the value of the property between 1909 and 1910 so in order to play safe I used \$11,650 for the entire bond issue in 1906 at \$60,000 and started out with those two figures? A. That should be \$11,650 and the entire bond issue.

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Q. Did I misread it? A. No, you read it correctly.

Q. Isn't it a fact that at the York Company formerly the Windsor Company had outstanding \$30,000 of capital stock at that time? A. That is correct.

Q. Isn't it also a fact that the time the company had \$60,000 in bonds outstanding? A. That is correct also.

Q. You said something also, and I refer now to Page 192, about the fact that the Red Lion Company was built out of capital stock subscriptions. Now, what information did you get from the books of the company which in your judgment justified that statement?

The Commissioner: Doesn't the long answer on the bottom of Page 192 explain how he arrived at that, the latter part said why he did it?

Mr. English: I am asking him now what information he found in the books of the company that justified that statement.

The Witness: There were no books for the Red Lion Company.

By Mr. English:

Q. You know as a matter of practical experience that the company might construct a plan out of borrowed money, do you not? A. Oh, yes. I also know that they may make temporary loans and later pay them out of earnings.

Q. That is correct. But there is nothing in the records to justify the opinion that you expressed, and your treatment of this company as being built out of stock subscriptions, is there?

A. Outside of the testimony I gave on direct examination this morning about the finding of evidence of indebtedness in the office of the Secretary of the Commonwealth, I believe that that is a correct statement.

Q. Of course, we may not find ourselves in perfect harmony as to that. I am interested now in getting the source of your

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whether that was a fact? A. I examined all the records I could find.

Q. Did you find that was a fact in this case? A. That was my conclusion on the information I had.

Q. What information did you have? Let us have the information that you concluded it from? A. I told it to you at the last hearing. I also gave it again here.

Q. Let me have it again. What was the information upon which you based your conclusion? A. Capital stock tax reports.

Q. Let us go step by step. Capital stock tax reports showed \$30,000 issued stock, is that correct? A. That is right.

Q. Let me have the next one? A. Capital stock tax reports of Red Lion.

Q. Capital stock tax reports of Red Lion. What did the capital stock tax reports of Red Lion have to do with the York and Windsor Company? A. Because the Red Lion Company passed out of the picture and became part of the new York and Windsor. York and Windsor is really a continuation of Red Lion.

Q. That is correct. Now, we start with that basis. Now, we are down to the \$30,000 issued capital stock. Do you know whom that was issued to? A. I have a copy of the agreement of merger and consolidation up in my office. If it is not there I don't know where the information might be.

Q. Again coming back to the thing that I am trying to find out, which is: Why did you ignore the issued capital stock in this case, York and Windsor and use it in every other case in arriving at your estimated original cost of the property? A. I already told you that, Mr. LaBrum.

Q. You have not given any reason for ignoring it. You say because Red Lion passed out of existence, and that only accounts for \$11,650. What became of the difference? A. I have known of cases where capital stock was issued for nothing.

Q. I want to know of this case. I am talking about this

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particular case. What were the facts in this particular case?

A. I told you, Mr. LaBrum, several times now, and I don't know what more I can do.

By Mr. English:

Q. That is, you have nothing further to add? A. That is right.

Mr. LaBrum: If Your Honor please, I don't think that is a very satisfactory explanation. Here we have an exhibit predicated almost entirely on the issued capital stock, and in this particular case, York and Windsor, because it suits his purpose he throws it out, because he has heard that some—

The Commissioner: Just a minute.

Mr. LaBrum: I want the facts.

The Commissioner: Where it suits his purpose.

Mr. LaBrum: I only want to know the facts. Why did he do it?

The Commissioner: This witness has one purpose, and that is the same purpose that I and everybody else in connection with the Commission has, and that is trying to get at the facts.

Mr. LaBrum: Yes, and I am asking him the facts.

The Commissioner: That is the only purpose we have, and there is no purpose to be suited otherwise.

By Mr. English:

Q. On Page 174—

Mr. LaBrum: I don't think he has answered the question.

The Commissioner: He said he has answered it as far as his ability goes.

Mr. Miller: He has answered it several times.

H. Root Palmer—For Commission—Cross

AFTER RECESS:

H. ROOT PALMER, recalled.

Cross Examination

By Mr. Keesey:

Q. Mr. Palmer you testified that you were Vice President of the Harrisburg Light Heat and Power Company, was it for about eight years? A. Approximately yes.

Q. And they had a steam plant, did they, a steam heat plant? A. Yes sir.

Q. Was it operated by itself or in conjunction with the generation of electricity? A. By itself. Operating as steam heating primarily, generating electricity as a by-product.

Q. It was originally built for the generation of steam? A. It was an old generating system which had been converted into a steam heating station.

Q. In the course of your duties with that company did you have any occasion to allocate the parts used for steam and the parts used for generating electricity? A. Yes sir.

Q. You did that? A. Yes sir.

Q. For what purpose? A. Rate making.

Q. For steam, rates for steam? A. Yes sir.

Q. Is that the only occasion on which you attempted to allocate the different parts of a joint steam heating and electric generating plant? A. Yes sir.

Q. And it was for what purpose: the company's own private use or for the Commission, or what? A. A rate proceeding before the Commission.

Q. In which you were testifying in behalf of the Steam Heat Company? A. Yes sir.

Q. When was that? A. 1923 or 1924. I don't know exactly, but about that time.

Q. What was the proceeding, a proceeding instituted by

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whom? A. Steam heat customers of the city of Harrisburg against the steam heat rates.

Q. So what you were doing in that proceeding was attempting to justify the cost of steam that the company was charging? A. Yes.

Q. Of course, you were testifying for the company. Your purpose in that case was to allocate everything to steam production that you reasonably could? A. No sir.

Q. What did you do? A. Based upon facts as nearly as they could be secured.

Q. But you brought out all the facts useful to the company, I assume?

The Commissioner: I don't know, Mr. Keesey, whether that is fair to the witness. He was fair, he said to bring out the facts.

Mr. Keesey: I will withdraw the question.

The Commissioner: I think most of us have sat through a number of rate cases. I don't think he was sitting up nights trying to injure his company, of course.

Mr. Keesey: I withdraw the question.

By Mr. Keesey:

Q. Did you use the same theory of allocation in that case as you did here? A. Used the basis of use as agreed upon between the complainant's and the respondent's engineers.

Q. In this case you had instruction to go to York, as I understood you at the first hearing, to determine the use that was made of the various parts of this joint plant, and allocate to steam production the parts that you thought were used solely for that purpose, and allocate to electric generation the parts and equipment that were used solely for that purpose, and the parts used jointly you allocated between the two uses in accordance with your judgment? A. Yes sir.

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Q. Then in this case you allocated to the production of steam approximately \$841,000 to the generation and transmission of electricity, approximately \$503,000? A. I think it is the reverse.

The Commissioner: As shown on what exhibit? Exhibit 18.

Mr. Keesey: Exhibit 18, yes.

The Commissioner: \$841,000 for electricity and \$507,000 for steam.

Mr. Keesey: Yes.

Mr. Miller: Are you using the original 18, or the revised exhibit?

Mr. Keesey: I am not using the revised exhibit.

By the Commissioner:

Q. There is only \$100 difference in the revised exhibit, is that correct, Mr. Palmer? A. \$107.

Q. Exhibit 29 gives the revised figures, does it not? Isn't that correct? A. Sheet 10 revised.

Mr. Miller: That is correct.

By Mr. Keesey:

Q. Then you come to the conclusion that no part of the property that was allocated to the production of steam should be included in the Electric Light Company's rate base? A. The allocation of the property to steam production was in my judgment necessary for the generation of steam.

Q. Yes; I understand that, but then didn't you go further and state the opinion that no part of the property so allocated should be included in the Edison Company's rate base?

The Commissioner: You didn't mean that, that no part of the property. You meant that no amount indi-

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cated by the \$507,000, that no part of that property is included in the Electric Company's rate base.

Mr. Keesey: That is what I intended to say. I meant the part allocated by him to steam generation.

The Witness: That is correct.

By Mr. Keesey:

Q. Now, I was not sure on what theory you thought that that should be excluded, whether it was because it was used in steam production or whether it was because production of steam was in your opinion made at a loss? A. Primarily the steam generating facilities are for steam heating purposes; and the generation of electricity is incidental or a by-product in connection with steam generation for steam heating.

Q. For the Electric Company, which owns title to all the property, doesn't it? A. I believe it does.

Q. If the Electric Company had generated and sold steam at a profit would you still think that that part of the plant devoted to the production of steam should be excluded from the rate base? A. I don't know until that condition existed and was investigated.

Q. You really threw it out because it was not making a profit, didn't you? A. Yes.

Q. And, therefore, in your opinion was a burden on the electric consumers? A. Yes.

Q. I thought I understood, but I just wanted to make sure? A. Yes, sir.

Q. Now, when you made up Exhibit 20, showing the cost of operations and the amount received from steam and showed that the steam operations were conducted at a loss, did you know about the credits which the Edison Company received in 1931, 1932 and for part of 1933, which Mr. McShea testified about this morning?

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The Commissioner: You mean as to electricity purchased wholesale?

Mr. Keesey: Perhaps I had better show Mr. Palmer the contract.

The Commissioner: You mean credit for that particular amount?

Mr. Keesey: Yes.

By Mr. Keesey:

Q. Mr. Palmer, I show you this contract-dated August 1, 1921, between the York Haven Water and Power Company and the Edison Light and Power Company, and call your attention to paragraph 9, whereby the Edison Company agrees that if for any reason Power Company shall at any time be unable to generate and distribute sufficient electrical energy to supply all of its customers, Edison Company will upon reasonable notice in writing generate through its own steam power plant electric energy and use same in certain respects for the benefit of the Power Company, do you want to read this? A. I don't object to your reading it.

Q. Under the terms of this contract Power Company, York Haven Company, paid to the Edison Company, in accord with Mr. McShea's testimony in 1931 \$32,000; in 1932, \$31,950—

The Commissioner: Not according to Mr. McShea's testimony. Mr. English gave those figures, and those figures were reflected in another account.

Mr. Keesey: When Mr. McShea was on the stand this afternoon he referred to an exhibit No. 15, in which it is set forth that the Edison Company received from the Metropolitan Edison Company, which was subsequently I might say the York Haven Water Power Company, on account of the credits in this contract in round

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figures in 1931, \$32,400; in 1932, \$31,950, and for the eight months of 1933, \$21,300. Now,—

Mr. Miller: Do you mind stating the account in which that was listed, Mr. Keesey?

Mr. Keesey: It is Line 26, in Exhibit No. 15, Sheet 1.

The Commissioner: Mr. McShea didn't testify to that. It was brought out by Mr. English in the exhibit showing amounts paid to Metropolitan Edison by Edison Light and Power for wholesale power. Those figures were given by Mr. McShea, and the exhibit was read by Mr. English and agreed to by Mr. McShea, and then Mr. English asked Mr. McShea whether he knew that under the contract there were certain amounts paid back, so to speak, by Metropolitan Edison to Edison Light and Power, and Mr. McShea as I recall it said he didn't know about the contract, but that the amounts which Mr. English then recited as amounts returned, or credits, were shown in another exhibit by Mr. McShea under a separate account. I think that was the mechanics of the thing this morning.

Mr. Miller: That is right, this morning.

The Commissioner: However, Mr. McShea didn't testify that these amounts were paid back for that purpose, but said that those amounts were included in his setup in another account.

Mr. Miller: I merely wanted Mr. Keesey to mention the account in Exhibit 15 under which these amounts appear. I don't question the amounts themselves, nor that they were repayments under that contract.

The Commissioner: I am only calling attention to the fact that Mr. McShea didn't testify to the fact that those amounts were paid back by Metropolitan Edison. There is a distinction without a difference.

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the witnesses have, that with other factors with that it does.

By Mr. Keesey:

Q. Did you read, Mr. Palmer, the existing contract between the Edison Light and Power Company and the Metropolitan Edison Corporation and the Safe Harbor Water Power Company and the Pennsylvania Water Power Company? A. Yes, sir.

Q. There is a similar agreement in that contract, is there not, that the Edison Company maintain this plant, this steam plant as a standby for generating electricity? A. Yes, but there is also a provision in there that the York Edison Company shall take all their requirements for electricity except those generated in connection with the steam heat system.

Q. That is right. A. And that electricity generated, furnished in connection with the steam heat system is calculated on the billing price and paid for in addition by the York Edison Company to the expenses of generating it.

Q. For the expenses of generation, was what I was coming to as soon as I could find the exhibit. Now, Mr. Palmer, on Sheet No. 2 of Exhibit 20 you show that the cost of steam generation was \$88,805? A. Yes, sir.

Q. That the cost of electric generation was \$8,958? A. Yes, sir.

Q. Did you give any recognition anywhere in this exhibit, or any other part of your testimony, for the value of the electricity generated at the steam heating plant to the Edison Company? A. No, sir, not in that exhibit.

Q. Did you anywhere in any of your calculations of the value of this plant to Edison Company? A. Yes, sir.

Q. Where? A. But they have not been submitted as exhibits. I did in my consideration of it.

Q. But it is not in the record? A. No, sir.

H. Root Palmer—For Commission—Cross

Q. Well now, is it not a fact, as shown on Exhibit No. 6 on Sheet 29 that the electricity generated in 1931 was 2,877,000 kilowatt hours in round figures?

The Commissioner: From the steam plant?

Mr. Keesey: Yes.

The Witness: 2,877,766.

By Mr. Keesey:

Q. Yes. In 1932 there were generated by the steam plant 3,800,000 kilowatt hours plus? A. 3,827,850.

Q. And in 1933, 3,500,000 plus? A. 3,512,120.

Q. 1934, 3,266,000 plus? A. 3,266,700.

Q. And in 1935, 3,160,000 kilowatt hours plus? A. 3,161,700.

Q. And in 1936, for the first six months, 1,988,400? A. I don't have any in 1936.

Q. Well, if that statement is shown on Exhibit No. 6, Sheet 29, put in evidence by Mr. McShea, you would accept it?

Mr. Miller: The Commission will agree that that figure is correct, Mr. Commissioner.

By Mr. Keesey:

Q. Now, from the generation of the steam plant, plus the electrical part of it, didn't the Edison Company receive without any cost other than you have referred to in Exhibit 19, the value of those kilowatt hours? A. For operating expenses only.

Q. But they did receive the benefit? A. For the operating expenses only that you include.

Q. Yes. A. There are no fixed charges included.

Q. According to your Exhibit 19, which I understand includes no fixed charges? A. Correct.

Q. They did receive the benefit, didn't they? A. For the kilowatt hours.

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Q. In 1931, the average cost of kilowatt hours if they had purchased them would have been 9.27 mills, wouldn't they—I am referring to Sheet 2 of your Exhibit 19? A. Yes, sir.

Q. And in 1932 the average cost would have been 9.52 mills? A. Yes, sir.

Q. And in 1933, 9.28 mills? A. Yes, sir.

Q. In 1934, 9.07 mills? A. Yes, sir.

Q. And in 1935, 8.17 mills? A. Yes, sir.

Q. And you don't have the average cost for 1936? A. No, sir.

Q. Now, in addition to that didn't the Edison Company receive the benefit in 1931, 1932 and 1933 of the standby credit paid by Metropolitan Edison Company? A. That was credited I understood from Mr. McShea's testimony to other revenue.

Q. But it resulted from maintaining and operating a steam plant, didn't it? A. Non-operating revenue, yes, sir.

Q. I mean the credit was due to the operation and maintenance of this company plant? A. Revenue to the company.

Q. When you say revenue, Mr. Palmer, you are not talking in technical accounting terms, you mean a receipt to the company, a receipt of money from the Edison Company and credited as against power, however it was paid, a benefit to the company received by reason of the operation and maintenance of the steam plant? A. Yes, sir.

The Commissioner: Whether it was cash received or credit, it meant paying that much less to Edison Company for the current.

Mr. Keesey: That is right.

The Commissioner: The total payment was reduced thereby.

Mr. Keesey: The point I am making is that it was due to the operation of the steam plant that they got the credit.

H. Root Palmer—For Commission—Cross

By Mr. Keesey:

Q. When at the last hearing you testified as to the various amounts received in different years for the sale of steam, the amount received by the Edison Company for the sale of steam, or the credit received to complete the picture you did take into consideration these other values that the Edison Company got from the operation of the steam plant, didn't you, that is, the credit from the Metropolitan Edison Company of the value of kilowatt hours, that are incident to that operation? A. Yes, sir, that would reduce the loss of the Edison Company by that amount.

Q. Of course, in that amount the Edison Company ought to be charged with the cost of generating electricity and shown in your Exhibit No. 19. For instance, let me try to make myself clearer: In Sheet No. 2 of Exhibit 19 you show that the cost of generating steam was \$88,805, and you show on Sheet No. 1, that the receipts from the Steam Company were \$81,709.84? A. Yes, sir.

Q. Now, the benefit to the steam company would be increased in that year, would it not, by a credit of \$32,400, and the value of the kilowatt hours generated less the cost of that electric generation is shown on your Sheet No. 2 as \$8,958?

A. For 1931?

Q. Yes. A. The total cost of generation was \$117,975.76. The credit for steam—

The Commissioner: Just a minute. What he is trying to correct is the cost of \$88,000 for the generation of steam. He says it is \$117,000, does he not?

The Witness: \$117,975.00 was the total cost of operating the steam plant, less a credit of \$81,709.84 for steam sold to the Steam Heating Company, leaving a net cost of generation of \$36,265.92.

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By Mr. Keesey:

Q. Now, will you look at Sheet No. 2 of Exhibit 20, please?
A. Yes sir.

Q. There you state the total cost of operating the steam plant was \$117,975.76? A. Yes sir.

Q. And you said that the cost of operating the steam generating portion of that plant was \$88,805? A. Yes sir.

Q. And that the cost of electric generation was \$8,958? A. Yes sir.

Q. And that the balance of the cost \$20,213, was the cost of transmission? A. Yes sir.

Q. Which had nothing to do with either steam generation or electric generation, did it? A. Yes sir.

Q. So that shows that in that year for which the Edison Company received \$81,709.84 the cost of that according to your calculations was \$88,805? A. Yes sir.

Q. Now, what I want to show, and what I understood you agreed with me, that in estimating the cost of operating that plant of the Edison Company, you should take into consideration the \$32,400 credit received by the Edison Company in 1931 from the Metropolitan Edison Company, and you should also take into consideration the value of the kilowatt hours produced in the course of that operation, which in that year were 2,877,766? A. Yes sir.

Q. Now, Mr. Palmer, you have looked on this plant as being primarily devoted to the generation of steam, and only incidentally used for the generation of electricity, and in part in support of that position you cite part of the contract which requires the company to buy all of its energy requirements except what is used in the generation of steam? A. Yes sir.

Q. Would your opinion as to the purpose of that plant or the use of that plant be affected at all by the necessity of using it as a standby plant in case the source of purchased power would be unavailable? A. No sir.

H. Root Palmer—For Commission—Cross.

The Commissioner: When did that happen?

Mr. Keesey: Last January or February when we had our flood.

The Witness: The capacity available in excess of the Steam Heat Company requirements—

Mr. Keesey: And not very long. I don't want to be misleading.

The Witness: The capacity available for electric generation in excess of the requirements of the Steam Heat Company is very small indeed.

By Mr. Keesey:

Q. How much? A. Without making an accurate calculation it is approximately 3,000 kilowatts by use of the boiler capacity installed with none available for reserve in case of a failure.

Q. You mean that is the most they could produce down there, 3,000 kilowatts? A. In excess of the steam heat requirements. That does not include the electricity generated in connection with the steam heat system. That includes the electricity generated in excess of the steam heat requirements.

Q. Which would make about five or six thousand altogether? A. Approximately 5,000 total.

Q. 5,000 total? A. Between 5,000 and 6,000.

Q. Don't you think it might be 7,500? A.—It might be for very short periods, not reliable for any lengthy period.

Q. I am only talking about emergency periods.

The Commissioner: We are talking about reliable service.

By Mr. Keesey:

Q. What do you think would be the capacity on a reliable basis? A. Well, the maximum demand on the heating system has been 110,000 pounds of steam per hour. During that pe-

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Mr. English: We will stipulate the amounts by agreement if that is agreeable to Mr. Miller, so we get that information before the Commission.

Mr. Keesey: It is stipulated that the amounts shown on Line 26 of Sheet 1, Commission's Exhibit 15, represent the amounts paid by Metropolitan Edison Company to the respondent in 1931, 1932 and 1933 by reason of Paragraph 9 in the agreement between York Haven Water Company and Edison Light and Power Company just referred to, and the other provisions of that agreement relating to the charge.

The Commissioner: Now, Mr. Keesey, are you by that stipulation attempting to state, and are you stating that all the amounts paid over by Metropolitan Edison to Edison Light and Power Company are in consideration, of what amounts to a standby service, is that the picture?

Mr. Keesey: That is true.

The Commissioner: Then as I understand it in this long agreement there is no other provision which provided that for various other reasons there may be a refund by Metropolitan Edison, is that correct?

Mr. Keesey: That is correct.

The Commissioner: That is the only consideration under which payments are paid back.

Mr. Keesey: That is the only consideration.

Mr. Miller: Mr. Commissioner, I believe I can agree to that stipulation, but I would like an opportunity to check with Mr. McShea, so that if there is any respect in which the stipulation should be modified we can modify it.

Mr. Keesey: Oh, surely. I can examine Mr. Palmer on the assumption that these amounts are right, but I thought it was easier to give the amounts here.

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Mr. Miller: That is perfectly satisfactory.

By Mr. Keesey:

Q. Now, did you know about those credits, Mr. Palmer when you made up Exhibit 19? A. Exhibit 19?

Q. You can answer that, can't you, just yes or no? A. No, they were not used.

By the Commissioner:

Q. Did you know about them? A. No, sir.

The Commissioner: Mr. Keesey, is it your contention that because under a contract or agreement made between Edison Light and Power and Metropolitan Edison or its predecessor, that because Edison Light and Power maintained a standby service through the use or possible use of its steam heating plant for the generation of electricity, and thereby secured some credits from Metropolitan Edison that that of itself justified the inclusion in the rate base of this steam heating plant. The point I raise is whether it is your contention, and I understand by way of Mr. English that it is a fact, and you can, of course, properly contend to that, but what I mean is, if that were the only factor in the situation does that by itself justify the inclusion of the steam plant in the rate base of the Edison Company?

Mr. Keesey: Under that reasoning we disagree entirely with Mr. Palmer's theory.

The Commissioner: Will you answer yes or no as you just asked the witness to do?

Mr. Keesey: No, I can't answer that yes or no. You say does that fact alone?

The Commissioner: Yes.

Mr. Keesey: No. I would also like to explain as

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amount of power that we can purchase to a point that we have to use this power plant.

The Commissioner: It never happened before, except that one time.

Mr. Keesey: We frequently have trouble, or we used to at any rate with the Pennsylvania Water Power Company. Whether that is changed by the Safe Harbor Dam I don't know. You see their supply is primarily for Baltimore.

The Commissioner: That has nothing to do with the point of whether your steam plant is a proper reserve supply or not. I am asking as to the mechanical set-up in the territory.

Mr. Keesey: Each of these companies guarantees, as I recall the contract, to supply us with their respective parts of the load. Now, if there is a failure—

The Commissioner: And they don't limit you in capacity?

Mr. Keesey: Under ordinary circumstances they are willing to sell all they can sell, but if they get into difficulty their primary needs are elsewhere than York.

The Commissioner: The point I make is that situation has not developed except in time of flood condition, that has never happened in the memory of anybody living. It might happen again, of course.

Mr. Keesey: If we get absolute guarantees we will pay more for our power. If this plant is used as a standby the cost per customer could not be much more than a half cent a year, and I think they are glad to pay it for the assurance that they get power.

The Commissioner: Whether your source of supply were limited to the amount you now use, or whether there is excess there, under ordinary circumstances they would be glad to pay it, do you think?

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Mr. Keesey: In the last five years there has been an excess all over the country. If we get a straight guarantee we have to pay more than we pay now. That is my experience in negotiating these contracts, and that is all I can say.

By Mr. Keesey:

Q. Mr. Palmer, will you take your Exhibit No. 18, please—I would like to say before proceeding with these questions, that we don't agree with the witness' theory, we don't agree with his facts even on that theory, but I don't want to repeat that every time I ask a question.

Mr. Miller: I might clarify the record at this point by saying that it is the theory of the Commission that in addition to the fact that the steam generating property operated in connection with the supply of electricity results in a loss to the Electric Company that we don't feel that the consumers of the Electric Company should be called upon to pay a return on the property used for the generation of steam.

By Mr. Keesey:

Q. The second sheet of the schedule, Exhibit 18, there you allow park driveway 75 percent for electric use and 25 percent for steam use. On what basis did you make that allocation; I mean, what reason do you have for dividing it into those proportions? A. You are referring to the sections next to the operating office, shop and stores?

Q. What is marked on here, parking driveway. The area of it is 5,343 square feet, it is up near the northeast corner?

A. That is Schedule 1, 5,343 square feet, Schedule 1 revised is 6,309 square feet.

Q. I don't care about the number of square feet at all. All

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riod of maximum demand there were in operation two of the 600 horsepower boilers, two of the 520 horsepower boilers, and one of the 520 horsepower boilers which was equipped with the Cox stoker, that is, for the use of small anthracite coal. The 600 horsepower boiler was equipped with a more modern stoker and can produce more steam, a higher rating. The other two 520 horsepower boilers are equipped with Rooney type, not suitable to carry the load without the 600's with the Westinghouse Rooney type. That left in reserve only at that time one 520 horsepower boiler equipped with a Cox stoker. Had one of the 600 horsepower boilers failed at that time there would only have been available to replace it one 520 horsepower boiler equipped with a Cox stoker, which with its equipment could not take the place of the 600. On that condition there was practically no steam available for electric generation except the excess that didn't go through the steam heat turbine.

Q. They have two turbines, don't they? A. One high pressure turbine and one low pressure turbine.

Q. Do they use both ordinarily, do you know? A. Well, the low pressure turbine is used in connection with the steam heat. The steam going through that goes to the Heat Company. The high pressure turbine, the steam going through that is condensed.

Q. Would you think there might be 7,500 KW capacity, but there would be no reserve if one of the boilers would break down? A. Yes sir.

Q. But as long as the boilers work they could produce 7,500? A. For a short period.

Q. As long as the boilers continued to work?

The Commissioner: As long as nothing blew out.

Mr. Keesey: Well, we have never had anything to blow out.

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The Commissioner: Has it ever been used at full capacity for any length of time?

Mr. Keesey: I think it was last February.

The Commissioner: For any length of time?

Mr. Keesey: No, just for a day, I guess. I don't know. I have no business to answer that.

Mr. Wayne: During the flood in February.

The Commissioner: For a very short period?

Mr. Wayne: For a good many hours. Depends on what you call a short period.

The Commissioner: It was not more than a day?

Mr. Wayne: It was the better part of two days.

The Commissioner: Mr. Keesey, there is no contention on the part of the Company, is there, that if the steam heat plant were not there and in this picture at all that the Edison Light and Power Company would have any difficulty whatever in getting all it can sell from this source?

Mr. Keesey: They couldn't get it for a day and a half last February. The town would have been dark.

The Commissioner: That was a catastrophe of a nature that happens once in fifty years, that type, but I mean outside of that one time when you couldn't get it, the source of your wholesale power is available and you have plenty of reserve supply, don't you?

Mr. Keesey: Yes. I don't wish to get into an argument at this time, that is part of our case.

The Commissioner: I am not attempting to get into an argument. I am asking you for information, isn't that true?

Mr. Keesey: Under ordinary circumstances we can get all the power that we need, but it doesn't take as big a flood as we had last winter in order to reduce the

H. Root Palmer—For Commission—Cross

Q. Is there any incidental charge to the Edison Company in connection with the use of its steam heat plant other than the mere generation of electricity? Does it have or could it have any effect in reducing the cost of the power purchased?

A. Not under the present power contract.

Q. You think not? A. I understand so.

Q. And that is the theory on which you have made this allocation that you have just made? A. I assume that that is included with the billing in addition to the cost of generating.

By Mr. LaBrum:

Q. Mr. Palmer, if by reason of a contract or otherwise, it was necessary for the Edison Electric Company to operate a steam heating plant in order to generate electricity for cases of emergency or as a standby would that alter your conclusion as to allocation? A. No, sir.

By Mr. Miller:

Q. Is a credit on a purchased power any longer given on account of standby service? A. Not under the new contract made in—the early part of 1935, January. I recall at the moment there are no credits for standby.

Q. Then any value which this Steam heat plant might conceivably have on account of standby availability is not taken into account in contracts with the Metropolitan Edison or the other companies supplying purchased power, is that right?

A. Not at the present time, not since the new contract.

Q. Do you know whether last winter was an exceptionally cold or merely an exceptionally stormy winter, do you know, Mr. Palmer? A. No, I don't.

Q. Now, Mr. Keesey asked you various questions relative to rural electrification service or industrial consumers. Do you consider that service rendered to York Railways is comparable to rural service? A. I don't.

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Q. Is the basis of rates for rural consumers always cost?

A. In my judgment, no.

Q. Are not rates to rural consumers based on an entirely different conception than those applying to other classes of consumers?

Mr. LaBrum: We object to this. What difference does it make?

Mr. Miller: Mr. Keesey seemed to think it did.

The Commissioner: Mr. Keesey opened the question.

Mr. LaBrum: He said he didn't know a thing about rural electrification or rural rates.

By Mr. LaBrum:

Q. Isn't that correct, didn't you say you didn't make an investigation of rural electrification or rural rates? A. Right.

By Mr. Miller:

Q. Mr. Palmer, is this service rendered to York Railways Company rendered to a consumer of the Electric Company. In other words, is it rendered at arms length? A. No sir.

Q. Is it rendered to an affiliate—

Mr. LaBrum: Without some definition of the word—

By Mr. Miller:

Q. It is rendered to an affiliate of the Electric Company?

Mr. Keesey: Under a schedule filed by the Company and approved by the Commission.

The Commissioner: I would be able to follow who is testifying. Are you asking a question, Mr. Miller?

Mr. Miller: Yes, I was trying to develop by question and answer this fact:

H. Root Palmer—For Commission—Cross

Q. I am speaking now of only the 100 percent allocation?

A. Yes sir.

Q. They are owned by Edison? A. I assume they are.

Q. All the buildings? A. I assume they are.

Q. And they are not moveable. Do you think those buildings should be charged to the rate base of the York Steam Heat Company? A. The values?

Q. Yes. A. Yes sir.

Q. Even though they don't own them? A. Yes sir.

Q. Even though the courts have held that property not owned by a utility cannot be valued by it in estimating a rate base? A. It has been done.

Q. Now, if, Mr. Palmer, it should be decided that the maintenances of the standby plant by the Edison Company was reasonable and permissible then that decision would affect your allocation, wouldn't it? A. If that could be done.

Q. What I mean, if the officers of this company have determined that they need a standby plant and the Commission would agree with that determination, then these allocations would be entirely upset; of course, wouldn't they? A. These allocations would not determine the answer then.

Q. What? A. These allocations would not determine the answer in that case.

Q. They would not apply at all, would they? A. If the Commission decided it?

Q. These allocations would not apply to a situation like that? A. Certainly not.

Q. Of course, most of these—well, all of this machinery that you have allocated 100 percent to steam is needed in the generation of electricity by steam isn't it? A. All the—

Q. All of the boilers, chimneys, pumps and so forth, everything except the equipment that ties up the boiler with the Steam Heat Company mains, everything else would be needed in the generation of electricity by steam? A. Yes sir.

H. Root Palmer—For Commission—Cross

Q. Now, at the plant there is equipment consisting of rotary transformers and steam turbine equipment that I think was valued in round figures at around \$84,000, and that you said should not be included in the rate base of the Edison Company because they were solely in supplying current to the York Railways Company, and because that current was supplied at loss?

The Commissioner: Did Mr. Palmer say it should not be incorporated in the rate base because it was supplied at a loss?

Mr. Keesey: That is what I understood him to say.

The Commissioner: Will you refer to the testimony where he said that. Not the fact that he said it was supplied at a loss, but giving that as a reason why it should not be included in the rate base. That is what I want to know, where he said that.

Mr. LaBrum: It is on pages 118 and 119.

The Commissioner: Pages 118 and 119. You are interrogating the witness at Page 118.

Mr. Keesey: What I am referring to, Mr. Commissioner, is on Page 18, the question is with reference to this, speaking with reference to this equipment which I think he approximately valued at \$84,000.

The Witness: Approximately, yes.

Mr. Keesey: The question was, then your conclusion that it should be excluded from the Edison Light and Power Company valuation of Edison property is that according to your figures Edison Light and Power Company was selling current to be used by York Railways Company at a loss, at less than it cost it, is that right, and the answer is, yes sir.

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By Mr. Keesey:

Q. Mr. Palmer, you did testify at the last hearing, didn't you, that this equipment used for supplying York Railways Company only— A. Yes sir.

Q. Amounting to about \$84,000 should be excluded from the Edison rate base because current was supplied to the York Railways Company at a loss, of—

The Commissioner: That was part of the picture. Have you read the whole question and answer.

Mr. Keesey: I think I have a right to ask him about the various parts of his testimony.

The Commissioner: You certainly have.

The Witness: I think my testimony at that hearing was in treating of this property one of two courses may be followed: One, the property may include reproduction cost, estimating property used and useful in public service by respondent, and if the rate for service rendered by such equipment is found to be non-compensatory the rate itself could be adjusted to bring about such a condition. And two, in view of the treatment of the revenue received from the sale of electricity to the York Railways Company, namely, as a credit for the cost of purchased energy, so that such revenue does not appear as revenue to respondent, property used exclusively for this service can be excluded from the reproduction cost estimate. I have chosen to exclude property from the estimate. In so doing one arrives at a rate base, or at least an estimate of the cost of the property which is used in the public service and attributable to the revenue as received from the general public.

By Mr. Keesey:

Q. Now, you have just read practically word for word the answer that you made in your former examination, have you not? A. Yes sir.

H. Root Palmer—For Commission—Cross

Q. And that means, does it not, that in your opinion this transformer and appurtenant equipment should be excluded from the rate base of the Edison Company because it is used at a loss, they don't obtain what you call a compensatory rate for the use of it? A. Yes sir.

Q. Do you think that is a general principle of rate making or establishing a rate base that all equipment not profitably used should be excluded from the rate base? A. For a particular customer?

Q. Yes, and the loss so borne? A. And the loss was borne by the remaining customers?

Q. Yes. A. Yes sir.

Q. How about a rural extension that is operated at a distinct loss, should that be not counted in the rate base? A. I have not made a study of rural extensions.

Q. Let me take the instance of one street and then on the outskirts of a city, where you can show that that particular extension is operated at a loss, should the extension be excluded, should the value of the extension be excluded from the rate base? A. It is not, no.

Q. It should not be? A. No.

Q. Then what is the difference between that and this equipment used for York Railways Company? A. This equipment is only used and useful for one specific customer and is not available for other customers, and the use of the service by this customer is gradually decreasing, so that the loss is increased year after year.

Q. Suppose that the Railways Company were—

The Commissioner: Mr. Keesey, are you trying to break down the witness' position, trying to make him reverse his position? He stated his position exactly and clearly. I see no useful purpose in arguing with him. If you take the position that he is wrong you can show he is wrong.

H. Root Palmer—For Commission—Cross

Mr. Keesey: I have not been limited before in establishing this as clearly as I could.

The Commissioner: He has made it as clear as it can possibly be. If it is wrong you can show it.

Mr. Keesey: I was just going to ask, if I could ask one more question, I want to ask if he would apply the principle to equipment used for one industry, whether it was a profitable or losing industry.

The Witness: This relative equipment is not usable for other similar customers by that same company.

Mr. Keesey: I would like to reserve the right of cross examination until later as to the details of allocation, the theories of allocation which our engineers are now developing, but there is just one question I would like to bring out at this time because it is pretty general.

By Mr. Keesey:

Q. Mr. Palmer, you have stated in your testimony on Page 126, I think it is, that your allocation of the electric generation is based on the segregation of the electric and steam generating property in operation on the basis that the operating expenses are confined to the turbine operation and auxiliary periods, and meaning there, I take it, with the Edison operations, the Steam Company building and the turbine room and the electric energy delivered to the switchboard. Now, if the Edison Company gets any benefit at all out of the use of this steam, without going now into the question of how much steam they use, should not they be entitled to part of the value of the plant and equipment used in producing that steam? In other words, why on your own theory do you allocate it 100 percent to steam, if Edison Company uses part of the steam generated?

A. Because the steam generating facilities are only adequate for the requirements of the Steam Heating Company, including proper reserves for the production of the service.

H. Root Palmer—For Commission—Cross

Q. But every year for some years Edison Company has gotten over three million kilowatt hours out of it, have they not? A. And even so the use of steam by the steam heat customers is increasing so that any steam available for electric generation is reduced as the steam heat customers increase their use.

Q. What makes you say that the steam heat customers are increasing? A. I assume that—

The Commissioner: You are objecting to the word assume.

Mr. Keesey: When he is wrong.

The Witness: It is a going concern.

Mr. Keesey: It is an assumption that the steam heat customers are increasing?

By the Commissioner:

Q. Is that based on the record of consumption of steam by the Steam Heat Company, that is, that the number of customers is increasing? A. Not particularly the customers, there has been a small variation in the amount of steam sold.

Q. Yes, of course— A. There has been fluctuation depending upon the winter weather.

Q. They ought to have had a big winter last year.

By Mr. Keesey:

Q. You don't know whether it is increasing or not, do you, Mr. Palmer? I don't either. Will you look, Mr. Palmer, at Exhibit No. 6, Sheet No. 26. That was not prepared by you, but put in evidence by Mr. McShea, and then say whether or not the sale of steam is increasing or not?

The Commissioner: According to that sheet, as I read it, certainly consumption is increasing.

Mr. Keesey: The consumption in 1934 fell off in 1935.

H. Root Palmer—For Commission—Cross

The Witness: From 1931.

Mr. Keesey: 1936 seems to be running pretty much the same. Might I withdraw that question, it does not seem important, unless you want the answer.

Mr. Miller: I would just as soon have the answer. Go ahead and answer it.

The Witness: Increase in 1000 pounds condensation, Mr. McShea shows 1931-1935 approximately 13 percent.

By Mr. Keesey:

Q. What does it show for 1934-1935? A. I took it from 1931 to 1935.

Q. Between 1934 and 1935? A. A gradual increase from 1931 to 1934—

Q. Will you please listen to my question and then answer it. What does it show compared with 1934 and 1935? A. A decrease of about six thousand pounds.

Q. Do you remember what kind of weather we had last year, whether it was severe or not? A. Rather severe.

Q. Mr. Palmer, in the answer from your testimony which I read you, you have treated the steam generated as being produced entirely—as being chargeable entirely to the steam heat plant until it reaches the turbine where it is converted to electric energy. Now, what I want to ask you is, should not the Edison Company, even on your theory, be entitled to the benefit of some part of the plant and equipment for generating heat or so long as it uses part of the steam so produced for its own purposes? A. In its rate base?

Q. Yes. A. No sir.

Q. Why not? A. Not if the steam generating equipment is of a capacity for the Steam Heating Company and that the generation of electricity would thereby be incidental and not reliable, if, as and when the steam was available for electric generation it should not be in the rate base of the Electric Company.

H. Root Palmer—For Commission—Cross

Q. What should be done then as long as the equipment is owned by the Edison Company and operated by the Edison Company, is it your opinion that they should pay the Steam Heat Company for the steam that they used in the generation of electricity? A. The Steam Heat Company could operate that boiler plant as its own property, the value allocated to it, and the generation of electricity is incidentally a by product, delivered to the Electric Company on the basis of the steam cost to the Electric Company as purchased power. That would mean that the kilowatt hours generated would be included at the average cost of purchase power, and from that amount would be deducted the cost of this electric generation and the difference would be credited to the Steam Heat Company and act as a reduction in its operating expenses. The treatment the other way would mean that for 1935 when there was no credit from the Metropolitan Edison Company under a new contract for standby charge, the total generation cost, operating cost of the steam plant, was \$139,498.98. The credit for steam delivered to the Steam Heat Company was \$98,576.23, leaving a net cost of generation of \$40,912.73, that for the 3,161,700 kilowatt hours generated that year would be at the rate of 13 mills and the average cost of purchased power was 8.17 mills. If you add to the net generating cost fixed charges at 10 percent on the allocated value of the generating plant which is shown in Exhibit 19 it would be \$50,722.40, making a total cost, including fixed charges of \$91,635.13 to the Edison Company for the generation of 3,141,400 kilowatt hours. If that same power had been purchased under their present power contract they could have purchased that for \$25,655.23, leaving a cost to the Electric Company for 1935 of \$65,969.90.

Q. Based on the cost of purchased power in 1936? A. 1935, 8.17 mills, the difference would be larger for 1936, the rate is lower. The excess cost to the Electric Company would be greater.

H. Root Palmer—For Commission—Cross

I want to know is why you allocated 75 percent of that land to the Edison Company and 25 percent to the Steam Heat Company, when it is all owned by Edison Company? A. By reference to Schedule 2 you will note the words, "ash pit" there. That property there, part of it near the Pershing Avenue end does show some ash handling equipment, it is necessary to have space for ash trucks to get into that in order to haul the ashes away. The turbine room entrance for the taking in and out of large machinery is away in the rear and requires that space to go from the street back in there to get the machinery into and out of the turbine room, and the allocation of 75 and 25 percent was my judgment.

Q. Now, in the area representing the old boiler room you allocated 75 percent of that to steam and 25 percent to Edison, what was the reason for that allocation? A. That space is utilized by steam pipe and some equipment and some material for repairs and work in the boiler room, and was utilized by the Electric Company at the time I was out for some transformers and electrical equipment, and my judgment of the relative space occupied was about 25 and 75 percent.

Q. Of course, if it was not occupied for steam purposes, the Edison Company would have it included, wouldn't they? A. Well, since that inspection a change has been made. Really it is almost 100 percent steam now, because a machine shop has been put in there, and the work in the machine shop is almost entirely for the requirements of repairs to the boiler plant, steam plant.

Q. If the machine shop is moved some place else that would become 100 percent Edison? A. That was based on the use at the time.

Q. That would vary from time to time according to the use made of it? A. It might, but I don't know. That was what it was at the time I made the inspection.

Q. If you went down there again and saw it used entirely

H. Root Palmer—For Commission—Cross

by Edison then you would allocate it all to Edison? A. There are some places there that I know very well, because there is steam piping and steam equipment which would have to be removed first.

Q. With reference to the area used for substation transformers and coal storage what would be the reason for allocating the 54 to steam and 46 percent to Edison? A. At the time of my inspection there was utilized by the electric facilities of York Haven a substation, 165 feet long on Gas Alley and an average of 25 feet wide; making the total square feet 4,125. Estimating that they used increased facilities for the Electric Company, the space allocated was increased by \$5,175 feet, making a total allocation to the electric property of 9,300 feet. The remainder was used by steel structures for handling coal into storage and out and for the storage of coal, and therefore, required in connection with the operation of the boiler plant, and the percentage was .93 of 20,140, the percentage as noted, 54 percent and 46 percent.

Q. 54 percent of what? A. 54 percent of—

Q. 20,140? A. Yes sir. And 46 percent of 20,140 for the electric.

Q. On Sheet 2, of Exhibit 18 you allocate to Steam Company, 100 percent on the reproduction cost of all structures used in housing or serving the boiler plant equipment, don't you? A. Sheet No. 2?

Q. Yes, headed "Summary of building allocation." A. The new boiler room is 100 percent steam. The old boiler room is allocated.

Q. That you just said was now used as a machine shop. I intended to limit my question. When I said 100 percent, I meant 100 percent of building structures housing or serving the needs used only in steam production, those needs you have allotted 100 percent to steam? A. Yes, on a proportionate use, where that allocation is used.

H. Root Palmer—For Commission—Cross

By Mr. Miller:

Q. Mr. Palmer, is York Railways Company the owner of the Electric Company? A. From the testimony I have heard it is. I cannot answer that of my own knowledge.

Mr. Keesey: We will agree that it is.

By Mr. Miller:

Q. Do you have the demand figure of the Electric Company? In other words, what is the total demand, average demand, maximum demand on the system? A. 16,500 kilowatts.

Q. In other words, about twice the generating capacity, the standby generating capacity of the steam plant? A. The steam generating plant, more than twice.

Q. More than twice. Then if the source of purchased power should cease to be available, and the standby was called upon, the standby capacity would not suffice to serve the consumers? A. No sir.

By Mr. Keesey:

Q. It would serve some of the consumers, wouldn't it? A. Oh, if that was required in the summertime when the steam heat system was not in operation the capacity available in the generating system would be somewhat less than it would be in the wintertime if the steam heat system was in operation.

Q. Why? A. That steam heat turbine is not developing as much capacity with the back pressure of the steam heat system on it. I would like to amplify, the York Railways equipment,—

Mr. Keesey: I am not interested in that.

The Commissioner: Do you object to his amplifying his answer to your question?

Mr. Keesey: It seems to be unnecessary.

The Commissioner: It is in answer to your question.

H. Root Palmer—For Commission—Cross

The Witness: That equipment is owned by the Edison Light and Power Company, installed and operated by them to transform and convert electricity sold to the York Railways Company after it has passed through the meter and become property of the York Railways Company.

By Mr. Keesey:

Q. Do you mean that York Railways is charged with the electricity after it is transformed? A. It is metered on the AC high voltage side of the rotaries.

Q. Is there anything lost? A. 2300 volts and that equipment takes that 2300 volts and converts it to 600 volts direct current incidentally for the operation of the trolley cars, and it is equivalent to installing equipment for a customer after the current has been delivered to the customer.

Q. There is a loss of current in that operation, isn't there? A. That is reported on the meter in the operation of the rotary.

Q. And the Railways Company pays for the lost current? A. Exactly.

Q. Do you know what percentage that is? A. I don't.

The Commissioner: Is there anything further.

Mr. Keesey: We have nothing.

Mr. Miller: Nothing.

The Commissioner: Do you have anything further to offer, Mr. English?

Mr. English: Not at the present time, except this information which I am sure we will be interested in. Mr. Downes informs me that this work will be completed by the 15th of January and then we will be ready to stay with you as long as you can tolerate us.

The Commissioner: You don't think that could be moved up? I see Mr. Downes shake his head.

R. A. McShea, Jr.—For Complainant—Cross

amounted to \$681,851. I should like to ask you whether there are included in the operating expenses, as disclosed by the books of the company and which, of course, would be deducted from the gross revenues in arriving at operating income, any expenses which, in your opinion could be saved by the respondent if it was completely divorced from its affiliates? A. You are asking me now whether the respondent could save or reduce the amount of operating expenses actually incurred in 1935?

Q. If it was completely divorced from any connection with either the Steam Heat Company or the Railway Company, in your opinion? A. Of course I am not an operating man, Mr. Miles, and I don't know that.

Q. Perhaps you misconstrue the purport of my question, but you are an accountant. A. That's a broad question, that covers reproduction and all those other things.

Q. You have made a study of the operating expenses? A. We have examined the books.

Q. And you have testified fully to it? A. I have prepared a great many statements of operating expenses as shown by the books—I have done that.

Q. My question is, whether in the course of the examination you found any expenses which the respondent might save if it had not any connection or affiliation with either the Steam Heat Company or the Traction Company, which has been referred to in the evidence. A. It all goes back to the apportionment of the cost of operation of the power plant on Pershing Avenue. Now, certainly I don't feel that I can answer that question, because it seems to me it is an engineering proposition.

Q. Now, you testified that the respondent owns the building occupied by itself and its affiliates, but that the expenses of operation and the costs of that building are borne by the Edison Company, except the cost of electricity, steam heat,

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and the expense incident to a telephone operator and janitor's services? A. That's right.

Q. I should like to inquire whether you have any opinion, based on your investigation of this company and its affiliates, as to whether or not the Edison Company would not actually require the use of that entire building that it now occupies if it was completely divorced from its affiliates? A. That may be true.

Q. Well, is it true? A. I don't know.

Q. You have been there? A. Oh, yes, I have been there.

Q. I don't want to ask you a leading question, but I will ask you whether you found any congestion to exist in that building? A. I haven't been throughout the entire building, Mr. Miles. I have been on the first and second floors. I made one visit to the fourth floor and right now I don't know whether that's the top floor or not.

Q. Assuming solely for the purposes of the question, then, that the respondent would require the use of that entire building if it was divorced from its affiliates, isn't it a fact that the operating expenses in connection with that building would be increased so far as the Edison Company is concerned? A. With that assumption, that's true; yes, sir.

Q. At Page 57 is certain of your testimony as to the cost to the Edison Company of producing or generating steam heat and the price at which it sells it to the York Steam Heat Company. I should like, first, to ask you whether your knowledge of the cost of manufacturing such steam heat by the respondent is based solely on the information disclosed to you in certain minutes of the board of directors of the company?

(Discussion off the record.)

By Mr. Miles:

Q. Is your knowledge of the cost of that steam heat to the respondent company based solely on extracts from the minute books of the respondent company? A. Not quite.

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Q. You have further knowledge? A. In attempting to check that forty cent figure mentioned in the minutes I ascertain quantity of steam per thousand pounds of condensation produced during, I believe, the year 1934, since the resolution mentioned the year 1934, and from the accounts I saw both the cost of producing the electricity and steam, as reflected in the accounts. Before making any allowance for depreciation, taxes or anything, and then taking the number of kilowatts produced by the plant and applying nine mills as an arbitrary figure and deducting the so-called estimated cost of the electricity from the total estimated expenses, I got a figure of the estimated cost of the steam produced and then dividing one thousand pounds into that amount, I came to some figure in excess of forty cents a thousand.

Q. And you feel, and I say this with the greatest respect to you, you feel that your past experience enables you to determine that amount and state it on the record? A. I was only attempting to determine what the books showed.

Q. Therefore, your final conclusion as to the cost was a determination formed from an examination of the books? A. That's right.

Mr. Miller: That isn't quite right, Mr. Miles.

Mr. Miles: He says it is right, Mr. Miller.

Mr. Miller: Go ahead.

By Mr. Miles:

Q. What in your opinion did it cost the respondent to manufacture the steam in the year 1935 per one thousand pounds? A. I first would like to say that that was the year 1934, because it was the date mentioned in the resolution.

Q. All right. What did it cost in the year 1934, in your opinion? A. I came to a figure of about forty cents. That is,

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however, before the matters of depreciation, taxes and return were taken into the calculation.

Q. In other words, the forty cent figure includes only items of cost relating to operation and maintenance? A. That's right.

Q. Well, now, to what or in connection with what units of property would you calculate in fixed charges to add to that forty cent cost? A. Well, the production system of the property.

Q. Assuming that the respondent, Mr. McShea, discontinued the business of generating and selling steam, could it save any of the fixed charges which you suggest should be added to that forty cent cost? A. You mean as far as the rate payer is concerned?

Q. Yes; as far as the rate payer is concerned. A. That would all depend on what the Commission did with respect to allowing the full plant as used and useful property.

The Commissioner: Mr. Miles, just to get my mind clear, the questions you have asked would indicate at least the possibility that the cost of forty cents was not the whole cost. I mean there is a possibility of that.

Mr. Miles: What I intended to do, if the Commissioner please, is that this witness has stated definitely that it is not the whole cost and we think it is the whole cost, and I am trying to develop—

The Commissioner: If these other charges were not reflected in the forty cents, then it would not be the whole cost?

Mr. Miles: If they properly belonged in there.

The Commissioner: If they properly belonged in there?

Mr. Miles: Yes; but under our conception of the case they don't belong in there. We propose, if your Honor pleases, in our particular case to present data as to the cost of generating the steam.

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By Mr. Miles:

Q. Assuming, solely for the purpose of my question, that forty cents does represent the aggregate cost to the respondent of generating one thousand pounds of steam, do you regard forty-two and a half cents per thousand pounds as a compensatory rate for the respondent to sell it to the York Steam Heat Company? A. No; I don't. Two and a half cents seems to be a very small margin to me.

Q. I am asking you to assume for the purposes of my question that forty cents represents the entire cost. A. Oh, the entire cost including return and depreciation?

Q. The entire cost as you conceive it to be. A. I would like to find out what you conceive it to be.

Q. At the moment, if you don't mind, I am asking you. A. I would like to know the premise on which you are basing your question.

Q. My premise, to be quite candid with you, you have made a flat statement that the respondent is not selling steam at a compensatory rate to one of its affiliates. So far as I can analyze your testimony, and I have done so to the best of my limited ability, you have based your assertion upon the proposition that forty cents does not include any certain fixed charges, which should be included? A. That's right.

Q. Now I am asking you to assume that forty cents includes every increment of cost that is proper, do you regard forty-two and a half cents a compensatory rate?

The Commissioner: Mr. Miles, I don't quite follow your line of reasoning. This witness stated, specifically, that the forty cent figure does not include any charge for the return on the investment and taxes and, therefore, he says that the forty-two and a half cents is compensatory.

Mr. Miles: That is right.

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The Commissioner: And now you are asking him to assume certain facts which are totally at variance with the facts as he sees them and to which he testified on direct examination.

Mr. Miles: Your Honor, if I may say so, there does not seem to be anything abnormal in asking experts hypothetical questions. We propose, your Honor, to offer testimony that will show, we think, that there are no fixed charges properly applicable against the cost of generating steam.

The Commissioner: That were not included in the calculation of forty cents?

Mr. Miles: That's right. I am trying to find out from this witness whether two and a half cents represents a compensatory rate.

The Witness: I couldn't say that.

By Mr. Miles:

Q. That answer might satisfy the Commission but it doesn't satisfy me, because you have testified that that was a compensatory rate. Do you mean to tell the Commission that if forty cents includes every increment of cost that can properly be included in the cost of generating steam that forty-two and a half cents is a compensatory rate? A. Yes; it is.

Q. It is? A. It is.

Q. Referring to Commission Exhibit No. 11, which is a summary of utilization expenses as shown in respondent's books, have you since your testimony on October 28th analyzed that summary; and, if so, are you prepared to make any comments with respect to it? I ask that only because the record as of that date contains the assertion by you that you had not had an opportunity then to analyze it and I merely wanted the benefit of any criticism that you had to make if you had analyzed it since. A. I think I testified at the last hearing,

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R. A. McSHEA, Jr., having been duly sworn was examined and testified as follows:

Cross Examination

By Mr. Miles:

Q. Mr. McShea, on Page 21 of the record, in response to certain questions propounded by Mr. Miller, you testified as to the excess of net revenue over and above the sum equal to six per cent of the appraisal of Day & Zimmermann offered in the merger case in 1935. A. I believe that is correct, but I would like to see the testimony.

Q. Now, I should like to know why you used a return of six per cent in making that calculation? A. By reason of the Commission's resolution passed on April 2, 1934.

Q. And it is your understanding that pursuant to that resolution this Commission is empowered to make a uniform and standard rate of return with respect to all electrical utilities operating in the State of Pennsylvania regardless of the conditions under which those companies operate? A. I take it that is the last word of the Commission in fixing the rate of return for utilities and that's the reason I used it.

Q. Do you understand that that rule applies to all electrical utilities regardless of the operating conditions? A. Yes; I do.

Q. Why did you apply the return, which you so used, to the reproduction cost as found by Day & Zimmermann in 1934, for the purpose of determining what you regarded as excess earnings? A. Because in determining the fair value of a property, the reproduction cost is an important factor.

Q. Do you understand that that is the only factor in fixing fair value? A. I do not.

Q. Well, then, why did you apply the six percent return to the reproduction cost? A. Because it has been our experience in the Commission, at least since I have been with the Commission, that the reproduction cost usually is just about the maximum figure.

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Q. If reproduction cost, Mr. McShea, in your opinion is not synonymous with fair value, would six per cent applied to reproduction cost indicate a basis by which you could measure what you term excess earnings? A. That is the guide as to what the excess earnings might be.

Q. Now, Mr. McShea, at Page 21 of the record is set forth certain of your testimony with respect to the amount by which the net operating income of the company in 1935 exceeded six per cent on the book value of the respondent's property, less the reserve for renewals and replacements. Do I understand from that testimony that you regard book value in this case as a measure or a standard by which fair value can properly be determined? A. I consider that to be the case, also.

Q. In this case? A. In any case.

Q. On Page 22, Mr. McShea, you said, in substance, that the revenues and expenses of the respondent referred to in your testimony were taken from the annual reports of the company without adjustments of any kind, but that you do not necessarily consider that they represent the proper revenues and expenses of the concern. I should like to inquire whether you have made any subsequent adjustment to those figures to get what you consider the proper revenues and expenses. A. At the time that that testimony was given our men hadn't finished the analysis of the accounts at York, and since I have given my testimony, as far as the operating expenses are concerned, I have made no statement in exhibit form as to what I consider the allowable operating expenses of the concern or the proper revenues.

Q. So since December 9th, you have not prepared any statement or summary reflecting what you regard as the proper revenues and expenses available for return? A. I have not.

Q. On Page 23 is contained certain of your testimony to the effect that the 1935 operating income of the respondent

Colloquy

Mr. Downes: I don't see how, sir. We will try.

The Commissioner: Then I take it that after the middle of January you will be ready to present your direct evidence.

Mr. English: Yes sir, and go through with it.

The Commissioner: It would be impossible to have a further hearing in January, because of the interruption of the Christmas holidays, and I will set the hearing down for the three days, the 20th, 21st and 22nd, if you think it will take that long to present your testimony in chief.

Mr. LaBrum: We will also have some further cross examination at that time.

The Commissioner: Suppose we put it down for those three days, in the hope that we can take the three full days, the 20th, 21st and 22nd.

Mr. Miller: Perhaps the gentlemen would like to examine Mr. Bierman at this time.

Mr. LaBrum: We are not prepared to examine Mr. Bierman at this time.

The Commissioner: I think we can get squared away on the 20th, and then we will really be moving along.

Mr. English: I would just like to ask you one question in this matter: Is it the position, I asked you at the other hearing, I asked you after the other hearing as to what rate base roughly you were contending for and you answered that question, is it the position of the Company that it has not been earning more than 6 percent return on the particular rate base, I mean on your interpretation of the particular rate base?

Mr. English: Yes sir.

The Commissioner: And that they didn't in 1935 or 1936?

Colloquy

Mr. English: I said no too rapidly. Mr. Keesey just corrected me. I wish you hadn't asked, but I understand in 1935 we did make a few nickels in addition to 6 percent.

Hearing continued.

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing on the above cause before the Public Service Commission of the Commonwealth of Pennsylvania, and that this copy is a correct transcript of the same.

E. E. MOYER
Official Reporter

Hearing held at the offices of The Public Service Commission, Harrisburg, Pa., on Wednesday, January 27, 1937, at 9:30 o'clock a. m., Eastern Standard Time.

Present: Commissioner STAHLNECKER, presiding.

S. G. MILLER, Esq. (Harrisburg, Pa.) for the complainant;

MESSRS. V. K. KEESEY (York, Pa.) and

CLARENCE W. MILES (1845 Baltimore Trust Building, Baltimore, Md.) for the respondent.

EVIDENCE ON BEHALF OF THE COMPLAINANT

Mr. Miller: Mr. Commissioner, with the consent of Mr. Keesey and Mr. Miles I am handing to the reporter a list of corrections to the testimony which the reporter will copy into the record at this point.

Colloquy

The said list reads as follows:

Page 169—First answer—The date “May 4, 1896” should read: “May 4, 1886”.

Page 175—First answer—fifth sentence—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 175—Third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 176—First paragraph—First sentence—The date “May 4, 1896” should read: “May 4, 1886”.

Page 177—First question—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 177—Second answer—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 177—Third answer—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 181—First answer, second paragraph—The amount “\$3,277.33” should read: “\$3,227.33”.

Page 182—Third question—“Edison Light and Power Company” should read: “Edison Electric Light Company”.

Page 182—Fourth answer—The word “day” should be “date”.

Page 194—Fourth answer—fourth sentence—The words “Red Lion” should read: “road or line”.

Page 195—First answer—second sentence—The words “Red Lion” should read: “road or line” and the amount of “\$7,000” should be “\$11,000.”

Page 195—First answer—third sentence—The phrase “I used the \$11,650 for the entire bond issue in 1906 at

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\$60,000" should be changed to "I used the \$11,650, and the entire bond issue in 1906 of \$60,000".

Page 197—Last answer—fifth sentence—The date "June 1, 1931" should be "June 1, 1913".

Page 208—Third answer—The date "January 1, 1901" should be "December 31, 1901".

Page 273—"Steam heat plant kite" should read: "Steam heat plant light".

Page 378—The last line should read: "Commissioner" and not "English".

Page 351—Line 10—of answer—insert the word "name" after the word "The" to read—"to carry the 'same' load". Line 11—Omit the word "Rooney". Line 18—Substitute the word "to" for the word "through". Line 19—Substitute the word "system" for the word "turbine".

Page 358—Line 4—of third answer, omit the word "that". Substitute the word "the" for the word "they". Substitute the word "use" for the word "used". Insert the word "of" after the word use to make it read "Estimating the use of increased facilities". Last line of third answer. Substitute "9300" for ".93".

Page 366—Line 9—Substitute the word "rotary" for the word "relative". Line 9—Substitute the word "suitable" for the word "usable". Line 21—Substitute the word "equipment" for the word "periods".

Page 367—Line 10—Substitute the word "protection" for the word "production".

Page 371—Line 19—Substitute the word "loss" for the word "cost".

Page 377—Line 2—Substitute the word "suitable" for the word "incidentally". Line 8—Substitute the word "recorded" for the word "reported".

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when I finished my examination, that I had no further comments with respect to that exhibit. That is my recollection.

Q. Since October 28th have you made a detailed analysis of the general administrative and other general expenses of the respondent, as set forth in Commission Exhibit No. 14? A. I think we have completed some analytical work that was under preparation at that time—yes.

Q. Based either on your knowledge as of October 28th or any further analysis that you have made since that date, have you any opinion as to whether any part of the expenses under that item, now charged against the Railways Company or the Steam Heat Company, would have to be incurred by the respondent if the operations were completely divorced? A. What was the question?

Q. Perhaps I can simplify it a little. A. I wish you would.

Q. At the present time part of the administrative expenses are allocated between those three companies? A. That's right.

Q. Now, the purpose of my question is to get your opinion as to whether if these companies were actually divorced, the respondent would necessarily have to assume that part of the operating expenses which is now charged against either or both of its affiliates. A. That's a hard question to answer, Mr. Miles. In order to make a complete answer to the question, it seems to me it would be necessary to actually spend some time in the office down there and make time studies or other studies, as would be necessary, to determine the extent to which the expenses—as to what the expenses would be under independent operation.

Q. Is it perfectly fair for me to say that you have not made an investigation that puts you in a position to express an opinion on that subject? A. That's right.

Q. Mr. McShea— A. Excuse me. You are speaking of the Sheet No. 1 of Exhibit 14?

Q. Yes; that's right. A. That's correct.

R. A. McShea, Jr.—For Complainant—Cross

Q. Mr. McShea, referring now to Commission Exhibit 16, relating to what you describe as Non-Operating Expenses Other Than Taxes, do I understand it to be your opinion that revenue derived from the sale of merchandise should be included in the income of the respondent available for return on its property? A. It is. That is what I consider it to be.

Q. Can you state whether it has been the practice of this Commission in the past to so treat such income? A. As a matter of accounting, bookkeeping as prescribed by the Uniform System of Accounts, all companies have been required to classify as non-operating revenues and non-operating expenses all merchandising allowances and all merchandising costs.

Q. Well, that's what I was interested in, in referring to the Commission's prescribed system of accounts. You don't suggest, therefore, that this respondent is violating the rules of accounting of the Commission, do you? A. Oh, absolutely not. I was talking only from a rate standpoint.

Q. Is it your understanding that that system of accounting does not apply to accounting for rate making purposes? A. I consider merchandising operations to be promotional in character as far as the sale of electricity is concerned and, as a matter of fact, the new classification of accounts for electric companies, which became effective on January 1, 1937, and which is the classification prescribed by the Federal Power Commission, reclassifies those items and shows them under the operating expenses as sales promotion or some such designation as that.

By the Commissioner:

Q. Mr. McShea, I don't think that still answers Mr. Miles' question, as to whether you consider these particular items included in the picture as an allowable return and allowable expenses and are proper to determine a rate base. He asked you for your opinion as to whether the Commission did or did

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not do that. A. Well, we have had some few rate cases, electric rate cases that have gone through to a conclusion; I think the last one was some years ago, that was finally adjudicated, and the question has not been answered in any Commission ruling, but I can say this—

Q. In setting up your classification for this company did you include this in your picture or was it put in here as a criticism or as approval of the Edison Light & Power Company's set-up? What is it in here for? We are in this case to determine a proper, allowable return for this company. Now, is it because it has a direct bearing on that? A. In my opinion it should be included in the picture, and whatever net income or net loss there be in the merchandising operations should be added or deducted from the income.

By Mr. Miles:

Q. I do not wish to pursue this subject unnecessarily, but I should like to repeat one question, which you have not answered: Do you understand the Commission's present system of accounting is applicable to accounting in rate making cases? A. You mean wholly, entirely?

Q. Yes, sir; I mean that you take seriously the accounting practices of the Commission and you understand they are applicable to all accounting whether it is for rate making purposes or not. Now, I am trying to find out whether that is true in your opinion? A. No; I don't think so.

By the Commissioner:

Q. Mr. McShea, the essential purpose of the requirement of accounting for electric companies is to control the rates, essentially, the amount of return to be allowed to that company, is it not, by determining the full picture of that company? A. That's true.

Q. That is the underlying purpose, is it not? A. The purpose of the—

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Q. You don't set up a system of accounting just to make a company carry a great many accounts, in the justification of their income, but you do it for a purpose and the purpose is to regulate the company; isn't that the essential purpose in requiring such accounting? A. The purpose of prescribing the system of accounts, one of the main purposes, was to obtain uniformity in the accounting for all of the companies.

Q. To make it easier to control the rates and return of the companies, of course? Isn't that the essential purpose?

A. There are many purposes.

Q. I say, the essential purpose obviously in requiring any routine or method or practice to be followed by the utility is for the purpose of facilitating a proper control of the rates and service of that company, is it not? A. Probably; yes, sir.

The Commissioner: I will say for the record that it is. There are many other reasons, of course.

The Witness: Now, Mr. Miles, as I understand it, wanted to know what was recorded on the books in the classification of accounts which related directly to the matter of rates.

(Discussion off the record.)

By Mr. Miles:

Q. Mr. McShea, referring to the Commission Exhibit No. 22 relating to what has been termed in this case as donated capital rate consumer contributions—

Mr. Miller: Now, I believe the cross-examination was completed on that, Mr. Miles. There was a considerable cross-examination on that item and I believe the purpose—

Mr. Miles: None of the questions which I propose to ask have been asked, Mr. Miller.

The Commissioner: Do you object, Mr. Miller?

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Mr. Miller: Well, I will hear Mr. Miles' question first.

By Mr. Miles:

Q. Referring to the Commission Exhibit No. 22 relating to donated capital-rate consumer contributions, have you any knowledge as to whether or not the property or lines referred to on pages 2 to 10 of that exhibit are still in existence or whether those lines have since been replaced with new construction? I refer to the property—I mean in part or all of the property? A. Some of those lines have been replaced.

Q. Well, now to the extent that any lines have been replaced, do you think that the original lines built with the customers' funds should be deducted from the rate base? A. Yes.

Q. In other words, a line built by the company with John Doe's money and since replaced in its entirety with property built by the company with its money, you still feel that there should be deducted from the rate base a sum equivalent to the original investment by the consumer? Now, can you state approximately if you have the information, how many of the lines referred on Sheets 2 to 10 of Exhibit 22 as having been financed by customers have since been rebuilt by the company with its own money? A. I don't think I can give that to you now, but I can work it up for you.

Q. Now, Mr. McShea, would you mind explaining your theory upon which you think that even though a line has been replaced by property built by this company with its own funds that there should be deducted from the rate base a sum equivalent to the original contribution of the consumer? I mean, frankly, it is so difficult for me to follow it and I should like to have you, if you will, clarify it. A. Well, from the time the company first gave service over its lines it had accumulated a depreciation reserve by charges to expense year after

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year and, in effect, the customers have paid for the replacement of those lines through the depreciation charges.

Q. And under your theory would it not necessarily follow that all of the replacements of property taken care of through the reserve should be deducted from the rate base? A. No.

Q. How can you distinguish between this property which has been taken care of through the reserve and other properties?

The Commissioner: You are asking him to distinguish or attempt to distinguish between that property which was paid for originally by the company and that property which was paid for originally by somebody else? Are you still addressing yourself to the consumer proposition?

Mr. Miles: Yes, sir.

A. In that one case the customer has actually built the line and pays an amount sufficiently each year to replace the line.

By Mr. Miles:

Q. To replace the line, you say? A. Yes; whenever it is necessary through the depreciation charges.

By the Commissioner:

Q. You mean, Mr. McShea, that the customer pays in rates an amount sufficient to rebuild the line or an amount to properly capitalize it, or what do you mean by that? Surely you don't mean he pays enough in rates to pay for the actual capital involved in the rebuilding of that line, do you? A. What I mean, in the experience of this company there has been a large charge to the depreciation expense that has been paid for by the customers as a whole.

Q. I understand; but supposing a customer pays \$1,000 for his line—whatever the figure may happen to be; we will call

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it \$1,000, and then the company some years later replaces that line, it has a capital outlay of the amount that it puts in the new equipment, does it not? A. It has an outlay; yes, sir.

Q. Now, are you saying that that customer has contributed an amount equal to the amount of relaying that line or an amount equal to the proper capitalization of the cost? A. I say he has contributed the first cost but not the replacement cost.

By Mr. Miles:

Q. In other words, he has had nothing to do with bearing any part of the expense of the replacement cost any more than any other rate payer of the company, has he? A. That's right.

Q. Have you any knowledge as to how many lines referred to on Commission Exhibit 22 were built part with funds contributed by the customer and part with funds contributed by the company? A. I do not.

Q. And I take it that you have no information as to how many of those lines were built and paid for by the customers themselves and how many were built by the company with funds supplied by the customer, have you? A. I do not.

Q. And I take it that you have no information as to how many lines are now used and useful in the rendition of electric service, have you?

The Commissioner: That is the line—

Mr. Miles: Included on his Exhibit No. 22. My question relates solely to Exhibit No. 22.

The Witness: No; I have no way of knowing that.

By Mr. Miles:

Q. Now, have you any information as to who stands the expense of maintaining the lines referred to on Exhibit 22?

A. As far as I know the company maintains the lines.

Q. Well, as a matter of fact, you do know that they do

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maintain the lines? A. Well, unless it's an exceptional case, they do; yes, sir—that's right.

Q. And now do I understand that it is your opinion that any of that property of the respondent which may be used and useful in the public service but built or constructed with funds advanced by the consumers should be deducted from the rate base?

The Commissioner: You mean that funds advanced should not be repaid to the consumer? You mean funds actually contributed by the consumers whether they gave them to the company direct or built the line themselves?

Mr. Miles: That's right.

The Witness: That's right.

By Mr. Miles:

Q. Would your answer to that last question be affected in any way by the fact that the company owns the property in question and maintains it at its expense? A. It would not.

Q. Would your answer be the same if any part of the line shown on Exhibit 22, the distribution lines, were built in part with funds advanced by the consumer and in part with funds of the company?

Mr. Miller: Mr. Commissioner, I think we are getting into a long line of cross-examination on this point, which the respondent stated was covered at the last hearing, and I think I must object to any further cross-examination on the subject of donated capital. The respondents stated at that time that they had completed their cross-examination so far as they had gone on the exhibits that had been covered at the last hearing.

The Commissioner: Mr. Miller, that puts me in a difficult position because I do not see how, having

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allowed Mr. Miles to cross-examine on this subject to this degree why he should not be allowed to finish his cross-examination.

The objection was not pressed as to his cross-examination in part on this exhibit, and I will have to overrule the objection and direct the witness to answer the question, but with this understanding: I hate to be put in the position of breaking in on your cross-examination, Mr. Miles, but I think the question, perhaps, needs slight clarification. The last question you asked is with respect to a line partly built with company money and partly built with consumer money, but in that connection I understand you to mean that the amount listed on this exhibit—if there are any amounts affecting any cases such as you now describe—the amounts listed on this exhibit are amounts contributed solely by the consumer for the whole cost of the line.

In other words, what I am getting at, here is an item of \$1,300. Now if the cost of that line was \$1,300 in that particular case, Mr. McShea assumes in that particular case that Mr. Spangler contributes \$1,300. Are you attempting to indicate by your line of questioning that these amounts may have been contributed in part by the company or paid in part by the company?

Mr. Miles: Yes and no; and now may I clarify that?

The Commissioner: Yes.

Mr. Miles: What I am trying to ask the witness—I am not concerned with the dollar figure shown on the exhibit, is whether in fact any of the lines shown on that exhibit were built in part by company money and built in part by customers' money—whether they should be excluded from the rate base.

The Commissioner: As to the whole part or the part paid by the consumer?

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Mr. Miles: That's what I want to try and find out.

The Commissioner: Perhaps I don't correctly understand you, but I understand you are asking him whether the whole cost of that line was paid by the consumer or whether a part of it was paid by the consumer and part of it by the company?

(Discussion off the record.)

The Witness: As to the part of the line that was paid for by the company I think that should be allowed. As to the part paid for by the customer I think it should not be allowed.

By Mr. Miles:

Q. Mr. McShea, I refer now to Commission Exhibit No. 23—

Mr. Miller: Now, Mr. Commissioner, Exhibit 23 relates to the estimated original cost of the property and, as you will recall, that was gone into by Mr. Miles in the cross-examination of Mr. McShea at great length and in some detail and I see not reason for further cross-examination on that exhibit and, therefore, I object to such cross-examination.

Mr. Miles: Your Honor, there are two observations I should like to make with respect to Mr. Miller's objection: One is, it must be perfectly apparent to your Honor that in all fairness, where principal counsel in this case has withdrawn and other counsel has substituted, whose duty it is to follow through these proceedings, it would be rather extraordinary—it seems to me at least—to deny them an opportunity to reasonable cross-examine the witnesses, especially where so far it is humanly possible, we propose to avoid any questions asked by counsel at the last hearing; and I propose to confine my cross-examination to definite and relative facts.

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(Objection overruled.)

By Mr. Miles:

Q. I should like to ask you whether it is not a fact, that your estimate of the original cost of a substantial part of the property described in that exhibit was based upon information obtained from capital stock tax returns of the predecessor companies of the respondent and the books of such predecessor companies containing entries made prior to the year 1913?

A. That's true, Mr. Miles—a substantial part, you say?

Q. Yes; a substantial part. A. It's about one-third or one-fourth, I should say.

Q. Can you state whether the property or any substantial part of it referred to on the capital stock tax returns of the predecessor companies mentioned in your testimony is now in existence and used and useful by the respondent in the rendition of its present service? A. I cannot.

Q. Well, you mean to tell the Commission that you don't even know if any property included in those capital stock tax returns is still in existence? A. I certainly don't know whether the \$18,000 shown in there for the Peoples Company in 1886 is still in existence.

Q. Well, isn't that same observation true with respect to a great deal of the property referred in those capital stock tax returns? A. That's right.

Q. As a matter of fact it is a fact, is it not, Mr. McShea, that very little of the property referred in the capital stock tax returns of the predecessor companies is any longer in existence? A. Oh, I simply don't know. Some of it may be there. The real estate may be there.

Q. So it is pure conjecture on your part as to whether it is there or not, isn't that a fact? A. Well, my guess would be that a large part of it is not there.

Q. Now if it is a fact that a large part of the respondent

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company's property referred to in those capital stock tax returns is no longer in existence, will you state what assistance that exhibit can be in determining the original cost of the respondent's present property devoted to the public use? A. Because under ordinary accounting requirements, whether it is a system of accounting prescribed by a regulatory Commission or their own systems that they had prior to this uniform system, a company accounts for retirements of its property.

Q. Was it your purpose in Exhibit 23 to arrive at the original cost of the property now devoted by the respondent to the public service or to some other property? A. It was my purpose to determine the estimated original cost of the property that is recorded on the books.

Q. Regardless of whether the property is now devoted to the public service or not? A. That's right.

The Commissioner: If it is not, why is it on the books?

Mr. Miles: I do not know, your Honor.

By Mr. Miles:

Q. You don't suggest, by your last answer that the property described on the capital stock tax returns of the predecessor companies of the respondent constitutes the property now recorded on the books of the respondent, do you? A. Oh, no; I didn't say that.

Q. Then if you have no knowledge as to whether the property disclosed on the capital stock tax returns of the predecessor companies of the respondent is now used by the Edison Company will you state what assistance that exhibit has in finding the original cost of the present property of the respondent? A. This exhibit relates entirely to the book value as of June 30, 1936 as adjusted by what things we found in the capital stock tax reports or your records.

Q. What I am trying to inquire into, Mr. McShea, is what

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assistance is it in determining the original cost of the present property of the respondent? A. Of course I assume that if the company retired property from one year to the next that that retirement was properly taken care of on the books of the company. Now, theoretically if the books had been properly kept, and I am not saying they were not properly kept, they then would reflect the original cost of the property of the respondent.

By the Commissioner:

Q. Of the present property of the respondent? A. Yes.

By Mr. Miles:

Q. Even though according to your previous answer it is your opinion that a substantial part of the property referred to on that exhibit is not part of the present property of the respondent? A. That's right; because some of the property, after it was installed in the early days, has since been retired and credited out of the plant accounts.

Q. When did the prescribed system of accounting for electric utilities become effective in Pennsylvania? A. January 1, 1919.

Q. Isn't it a fact that the greater part of these capital stock tax returns that you have used for the purpose of estimating the original cost of the respondent's property were returns filed prior to that time? A. They were all filed prior to that time.

Q. Have you any knowledge of what accounting practices were followed by those companies? A. In the case of the two largest companies—the Edison Electric Light Company and the Merchants Electric Light, Heat & Power Company—they had double entry systems of bookkeeping.

Q. But it is a perfectly obvious fact, is it not, Mr. McShea, that prior to that time they could have kept their books in any way they wanted to? A. That's true.

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Q. And you have no knowledge whether the accounting system which was followed was a sound accounting system or not, have you? A. Well, from our examination of the accounts of those two companies they looked fairly good.

Q. Would you say they were kept rather comparably to the accounting system now required by the Commission? A. Well, now, I didn't compare them in detail.

Q. I want to get the benefit of your opinion. You say they "looked fairly good." "Fairly" is a relative term. Now what do you mean by that? A. Well, I had all the necessary books of account and general ledgers and journals and cash books and vouchers in the case of the Edison Electric Light Company.

Q. What reason have you for believing that they recorded every piece of property on their books at the original cost?

Mr. Miller: Now, Mr. Commissioner, we were through this thing from the ground up at the last hearing. The record contains a detailed statement as to just how Mr. McShea arrives at each figure of those costs, and I don't think we ought to drag this proceeding by a repetition of the testimony of Mr. McShea.

Mr. Miles: Your Honor, I cannot possibly concur in Mr. Miller's observation that the record is complete as to how these items were obtained. On the contrary it is our frank opinion that the record is quite incomplete as to the basis of the expert's statement that they do represent the original cost of the property.

The Commissioner: Mr. Miller, I have been anxious to proceed as expeditiously as possible, but as a matter of fact if Mr. Miles is proceeding in numerical order on these exhibits, he has come pretty near to the end of the road. What I am after is to get the full and most detailed facts.

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(Objection overruled.)

Mr. Miles: What was the question, Mr. Stenographer?

(Question read as follows: "What reason have you for believing that they recorded every piece of property on their books at the original cost?")

The Witness: From our examination, they based the charges to the plant accounts upon the amount of cash paid for the various kinds of property.

By Mr. Miles:

Q. Did you find any entries on their books which justify exactly what you just said, Mr. McShea? A. Except the write-up entries and the write-down entries.

Q. Did you find any entries on those books that stated that the particular entry reflected the original cost of the property? A. They never earmarked an entry as being original cost. No company ever does that.

Q. Then how do you know with respect to the companies whose books were kept prior to 1919 when no accounting system was prescribed that those companies recorded their property at original cost? A. By reason of the cash vouchers and the vouchers supporting the charges to the plant accounts.

Q. Do you have among your work sheets any cash vouchers or work papers that will show that any of these companies prior to 1919 recorded their property on their books at original cost? A. The vouchers don't state that. I have never seen a voucher yet in any company where it said it was the original cost of the property.

Q. Then I am asking you again: Is it or is it not a conjecture on your part that the property was recorded at the original cost? A. It is not.

Q. Then I am asking you to indicate some evidence in your

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possession that the property was recorded at original cost.

Q. A. I have told you the reason: The supporting vouchers.

Q. The supporting vouchers? A. Yes.

Q. In what way do the vouchers indicate that the property was recorded at original cost? A. The amount paid for poles, equipment, and fixtures of various kinds.

Q. Did you find any instances where one of the predecessor companies of the respondent purchased its property from another predecessor company? A. Yes.

Q. And when you found such an instance on what basis was that property of the purchased company recorded on its books? Was it at the price it paid the company from which it purchased the property? A. I believe that's correct.

Q. Does that represent your definition of "original cost" or "historical cost"? A. That does not represent my definition of "original cost" or "historical cost", but in this case the amount involved differed so little with the amount I had arrived at as an estimated original cost that in some cases I chose to select the purchase price as being fairly representative of the true amount.

Q. To that extent it was conjecture, was it not? A. To that extent I exercised my judgment.

Q. You have previously stated however that there were many instances where the bases of your estimate of original cost depended on capital stock tax returns. A. That's right.

Q. Among the companies upon which you relied in that connection were the Westinghouse Electric Light & Power Company and the Red Lion Electric Light & Power Company? A. That's right.

Q. I hand you herewith photostatic copies of two capital stock tax reports, one filed by the Edison Company in 1894 and the other filed by the Red Lion Electric Light & Power Company in 1896, the same being copies of two of the capital stock tax returns referred to in your testimony. Will you

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examine those photostatic copies and tell me if you find any statement contained thereon where the taxpayer refers to or attempts to declare the original cost of his property?

Mr. Miller: 'Mr. Commissioner, I object to that as irrelevant and immaterial in the light of Mr. McShea's detailed testimony as to the methods which he used in regard to the stock tax reports in his computations.

(Objection sustained. Exception noted for the respondent by direction of the sitting Commissioner.)

By Mr. Miles:

Q. So that means the capital stock tax returns of the two companies, photostatic copies of which I just handed to you, have nothing thereon that relates to the original cost of the property?

Mr. Miller: I object to that, Mr. Commissioner, as irrelevant and immaterial.

The Commissioner. I will overrule the objection because I think it would be pertinent for the witness at this time to answer that question.

The Witness: The capital stock tax returns do not state, in so many words, that the original cost of the property of either of the companies is so much.

By Mr. Miles:

Q. Do they state that in any other way? A. I explained how I used those capital stock tax reports.

Q. I am asking you, do the returns themselves contain any statement to that effect? A. I don't see the words "original cost" here in the return if that is what you are getting at.

By the Commissioner:

Q. You did however at the last hearing, Mr. McShea, go into a considerable detail of how you arrived at the original

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cost part of the figures which were on the capital stock tax reports, is that correct? A. That's correct.

By Mr. Miles:

Q. As a matter of fact, Mr. McShea, do not your estimates of the original cost of plant property as specified, for instance, to the Merchants Electric Light & Power Company and the Edison Electric Company—the two that you mentioned a minute ago—refer merely to an abstract of the net debits or credits as shown by certain ledger accounts of the two companies? A. Yes, that's right.

Q. And that is the basis of your determination of the original cost of those two companies, is it not? A. That's right.

Q. And you have not even considered, in making that abstract, as to whether the property is still in existence or used by the respondent, have you? A. Well, the books for both of those companies do not show retirements of property throughout the years.

Q. But in making that abstract you were not concerned with whether the property is still in existence or used by the respondent, were you? A. Well, I assumed that if the retirement was not made of a piece of property, it was still on the books and still in use.

Q. Yes; but I am talking about original cost. For the purpose of reaching your conclusions as to original cost you did not concern yourself as to whether the property was still owned and used by the respondent in the public service? A. Certainly I was concerned with it.

Q. And that was one of the factors that you considered in arriving at your estimate of original cost? A. Oh, no. In order for me to determine whether all of that property was still used and useful, I would have to inventory the property.

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Q. And you would also have to identify the property to see if it was still in existence, would you not? A. That's right.

By the Commissioner:

Q. If the books of the present company are properly kept, Mr. McShea, will they reflect anything in 1935 that is not used and useful? A. They might.

By Mr. Miles:

Q. The books would reflect all of the property that the company owned, would they not? A. That's right.

Q. Whether it is used or useful? A. That's right.

By the Commissioner:

Q. Would they indicate the amount set up for retirements?

A. You mean, depreciation reserve?

Q. Yes. A. Yes; of all the property.

By Mr. Miles:

Q. And it would also show the basis of the retirements, would it not? A. The books?

Q. Yes. A. Yes.

Q. Mr. McShea, at page 169 of the record is certain of your testimony relative to the Peoples Electric Light Company, one of the predecessors of the respondent, wherein you state that in a certain application for letters patent filed by it with the Secretary of the Commonwealth the company stated the value of its property at that time as \$18,000. A. That's right.

Q. Did you find anything that would justify a conclusion on your part that that was the original cost of that property? A. No, sir.

Q. But you used that figure for the purpose of ultimately determining the original cost of that company's property,

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didn't you? A. The best information I could get on that particular property and I used it.

Q. And that was a conjecture, was it not? A. Well, I have explained how I used it.

(Discussion off the record)

By Mr. Miles:

Q. Mr. McShea, at page 199 of your testimony you set forth a figure which you estimate to represent the original cost of the property of the respondent and I think you give that figure at \$4,237,105.09. A. That's right.

Q. I should like to ask you whether upon reflection it is not your opinion that the figure that you have given there is a figure representing in part original and in part historical cost of the company's property. A. I consider it to be what I term the estimated original cost.

Q. Well, having in mind your own answer to me a few minutes ago as to certain properties acquired by one predecessor from another, which you used as the only thing available to you at the time, do you still think that the figure is an estimated original cost, as distinguished from one of original cost and historical cost? A. Yes; I still think it is an estimate of the original cost of all of the property.

Q. Mr. McShea, can you state whether your examination of the books of the predecessor companies of the respondent has been sufficient for you to form any opinion as to whether or not those books were kept in accordance with sound accounting practices? A. I believe they were kept in as sound a manner as the books of most of the companies around that time.

Q. Around that time? A. Yes; and, incidentally, I would like to say that some books back in those days were very well kept.

Q. Have you formed any opinion as to whether the charges for maintenance and capital accounts and things of that sort

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were properly reflected on the books of the predecessor companies? A. We did not examine the payrolls to determine whether a proper segregation was made between capital and expense.

Q. Nor did you determine, I assume, whether a line of poles might have been charged to maintenance which should have been a capital item or vice versa, did you? A. Our examination was not that detailed.

Q. Mr. McShea, referring to Commission Exhibit No. 24, especially as it relates to the predecessor companies of the respondent, why do you apply six per cent times the amount of your estimated original cost for the purpose of calculating what you conceived to be a fair return on the properties of those companies? A. Why do I apply six per cent to undepreciated original cost?

Q. In your estimate of undepreciated original cost. A. Because that was the only indication I had of the value of the property at that time.

Q. In other words, you were not meaning to suggest that in 1910, for instance, a company would be limited to a return on its original cost, were you?

Mr. Miller: Mr. Commissioner, I object to that question as incompetent. That is a legal proposition which I do not think Mr. McShea is competent to answer.

(Discussion off the record)

Mr. Miller: Read the question.

(Question read)

Mr. Miller: I renew my objection, Mr. Commissioner.

The Commissioner: Well, I do not quite follow your objection, Mr. Miller. He does say that he used a six per cent return on the undepreciated original cost. I

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think it is proper to ask him why he uses it in this exhibit and for what purpose.

Mr. Miller: I think that is true, Mr. Commissioner, but that is not the question as I understand it. The question is whether Mr. McShea meant to imply that a fair return as of 1910 was or was not six per cent.

The Commissioner: No; my interpretation of what Mr. Miles' question—let us see if this correct or not—I understood he asked him if he thought in 1910 undepreciated original cost was the basis for the return.

Mr. Miles: That is precisely my question.

The Witness: I would like to take exception to the year you have mentioned because in none of those cases has it gone beyond the ten years of the organization of the companies. In other words, in the case of the Peoples the exhibit covers a period from 1886 to 1894. In the case of the Westinghouse the last year was 1902. The Edison was 1894. The Red Lion is 1900. The Merchants is 1910—that's right. There is one case—

By Mr. Miles:

Q. Yes. Now, in the first place, there is nothing sacred about my use of the year 1910. You can take any year. Now, my question was why you used original cost as the basis? A. In the first place I used original cost as I computed it because we had no other basis. In the second place—

Q. Perhaps you didn't understand my question. Mr. McShea. Assuming that the original cost was definitely known beyond all question by anybody involved in these proceedings of one of the companies as of 1898, why do you use original cost as the basis for calculating a return to which the company would be entitled? A. Because that's the only evidence that I have and that's the reason I used it.

Q. Then you are not meaning to suggest that original cost

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is synonymous with fair value for those particular years, are you? A. I am not meaning to suggest that it is or it was, but I do say it might have been in those years.

Q. It might have been? A. That's right.

Q. So it was conjecture, isn't that right? A. It might have been.

Q. Is it your opinion that the earnings of public utilities particularly electric companies in 1906, for instance, were kept within limits that reflected a return on the original cost of those companies? A. You mean, now, was there a regulation of the companies back in those years?

Q. No; I am not asking you whether there was regulation; I am asking you whether the business itself, the industry itself was kept within a limit on the basis of the original cost? You have offered this exhibit for the purpose of showing a lag in earnings, and I am merely trying to find out why you adopt this starting point for the purpose of establishing the lag? A. The earnings in those days as compared with the present time as between companies might fluctuate from ten to twelve per cent.

Q. As a matter of fact in those days it was on a competitive basis, was it not? A. That's right.

Q. And as a matter of fact in York there was competition? A. I know in some cases there was more than one company, but whether they were competitive, I don't know.

By the Commissioner:

Q. By the same token, Mr. McShea, the electric light companies in the years preceding the '20's, and certainly preceding 1934, earned an original return vastly in excess of ten per cent? A. I don't get your whole question, Mr. Commissioner.

Q. I say in the years up to 1920 and before 1934 many electric light companies earned substantially in excess and

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declared dividends far in excess of ten or twelve per cent?

A. Some companies; yes.

By Mr. Miles:

Q. Why did you use six per cent as the return on property prior to 1919? A. I used six per cent in view of the Commission's resolution of April, 1934.

Q. By what process did it occur to you that a resolution adopted by this Commission in 1934 would be applicable to business in 1906? A. I didn't say it would be applicable to business in 1906.

Q. Then why did you use it? A. I used it as a figure representing the legal rate of interest and, in addition to that, the resolution of the Commission feeling that I did not know whether the rate in 1906 should be four, five or six per cent.

Q. Or over eight per cent? A. That's right. I used it as figure wholly on the basis of the Commission's resolution.

Q. You don't have any opinion, do you, as to what would have been a reasonable rate of return for a utility on its earnings in 1903 or 1906? A. No, sir.

Q. Would you say that the hazards of the business prior to regulation were greater or less than they are today? A. Generally speaking, I might say that business prior to regulation was in the developmental stage.

Q. And it is also generally true that in those days it was not a regulated monopoly but a general business? A. In a great many cases.

By the Commissioner:

Q. And, therefore, more hazardous? A. That's right.

By Mr. Miles:

Q. In your opinion was it as easy to attract capital for a company organized to generate electric energy in 1907, for

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instance, as it is in 1937? A. In order to answer that question I would have to be familiar with the condition of the money market at that time.

Q. I think that is quite true and the only purpose of my question is to inquire why you should suggest to the Commission in an exhibit offered for the purpose of showing a lag in earnings, when you concede that the business was more hazardous, when you concede it was competitive, that it should be restricted to the small return than as it is now. A. In preparing this exhibit a percentage figure had to be used. I did not feel at the time it was prepared that I was limiting the company to six per cent return in those years, because if the Commission did not feel that this figure of six per cent was a proper figure to use for those years, it could substitute a figure of its own.

Q. So that the six per cent was used, as you frankly state, because the Commission, in 1934, adopted a resolution prescribing the rate of return of six per cent in Pennsylvania, because that was the legal rate of interest paid by borrowers of money in those days? A. That's right.

Q. That is a fair statement? A. That's right.

Q. And I believe you have said you had no knowledge as to the cost of money between the years 1896 and 1919, have you not? A. That's right and I have stated my reason.

Q. And you have no knowledge as to the return customarily earned by electric companies during that span of years, have you? A. Up to 1919?

Q. Yes. A. That's right, too.

Q. In estimating the expenses of the predecessor companies for the purpose of determining any so-called lag in earnings, can you state whether the expenses, which you have used, included depreciation, taxes, and other expenses now allowed by the Commission as a deduction from gross revenues? A. The expense figures that were used were developed wholly

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from what I found in the books of this company or from the tax reports.

Q. And you don't know whether they include or embrace all of the expenses which they, under the Commission's present regulatory powers, are permitted to charge against gross revenues? A. It certainly would not include all of the present form of taxes, all of the taxes we have now, as compared to the taxes we had at that time.

Q. But even forgetting the taxes you have no information, have you, as to whether these predecessor companies' expenses embraced other items which are not allowed—annual charges to the reserve and renewals and replacements and maintenance?

A. There is nothing in my figures for annual depreciation.

Q. Nothing in them? A. Nothing for annual depreciation.

Q. Is it a fair statement that there are perhaps some other items of expense now allowed by the Commission which are not included in the figures of expense of the predecessor companies adopted by you for the purpose of determining a lag in earnings? A. You say there might be some other expenses?

Q. Yes. A. I don't think so.

Q. Well, have you made an examination that you feel justifies you in making that answer to my question? A. I have examined the books where they are available and examined the tax reports where the books were not available.

Q. And you have examined the books and accounts to see whether they embraced the items of expense not allowed by the Commission? A. Certainly I have made no attempt to compare the expenses in the old days, back in the 1890's, with the expenses today.

Q. Nor up as far as 1913 have you made any such effort, have you? A. No.

Q. Have you formed any opinion, Mr. McShea, as to whether there was any lag of earnings in the companies that were predecessor to the respondent? I don't ask you to give

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that opinion with respect to each company but just the overall figure. A. Based upon a six per cent return I do believe there was some lag in the case of some companies in the early years.

Q. And to the extent that six per cent was not a fair return for the earlier years that lag would increase, wouldn't it?

A. If it was a deficient rate of return the lag would increase; that's right.

Q. And to the extent that the original cost of the property didn't represent the fair value of the property the lag would be greater, wouldn't it? A. Greater or less, depending on how the cost compared with the value.

Q. I want to ask you this question and it is predicated upon certain testimony that you have given to the Commission: Assuming that a company was organized in 1906 to engage in the generation and sale of electric energy, that it owned property built during that year at a cost to it of \$100,000, and earned a net revenue of \$2,000 a year for five years, and thereafter to date earned a net revenue of \$5,000, will you give the Commission the benefit of your opinion as to how much lag existed in the earnings of that company? A. Based upon what rate of return?

Q. I am asking you for your opinion, sir. A. I can't give you an answer on that.

Q. Therefore you have no opinion as to how this Commission should arrive at lag in earnings, is that correct?

The Commissioner: In stating your hypothetical question, Mr. Miles, do I understand that Mr. McShea is to assume that the property remains constant during these years?

Mr. Miles: Yes, sir.

The Commissioner: That is, there are no substantial additions or reductions in the value?

Mr. Miles: That is correct, sir, that the property remains constant at that figure.

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The Witness: What was the last question?

(Question read.)

The Witness: After the Commission have satisfied themselves of the rate of return to be used in calculating lag, I believe the actual deficiency in earnings below the amount taken by the Commission as a fair return for those years when added together for that period, until such time as they go on a regular earning basis and do earn a fair return, I believe those figures should be added together and that would be the return.

By Mr. Miles:

Q. In arriving at the lag in the manner that you have suggested, it is your opinion that the Commission should apply whatever it conceives to be a fair return for the years in question to the undepreciated original cost of the property? A. That probably would be as good as basis as any under the circumstances.

Q. That is the basis you have advocated in your exhibit, isn't it? A. That is the only basis I was able to use.

Q. Yes; and it is the one you are standing back of now, isn't it? A. That's right.

Q. And you have also assumed in that exhibit that six per cent was the fair return? A. I have explained why I used six per cent.

Q. Does the development of the so-called lag, as set forth in the exhibit we have been discussing, have any relationship to the going value of this company in the light of its presently owned and used property? A. Our Superior Court says it has some.

Q. I don't want to debate with you what the Superior Court says.

Mr. Miller: It is a question of law, Mr. Miles.

Mr. Miles: I beg your pardon, I am trying to get an

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expression of opinion from the witness as to whether or not bearing in mind the property of the companies predecessor to the respondent which he has used and which he has testified in a substantial part no longer exists. I am still asking the witness whether having that in mind he thinks that summary is of any assistance in determining the lag of the present Edison Light & Power Company. He has applied his six per cent return, in other words, to property that is no longer in esse, so to speak. Now, I am trying to find out whether that effects his judgment.

Mr. Miller: It has not been shown that it is not in esse.

Mr. Miles: He has testified that a substantial part of it is not. He stated so earlier in the day.

The Witness: I think I stated some of it is now. I don't think I used the word "substantial".

Mr. Miles: As a matter of fact I think you used one-third or one-fourth.

(Discussion off the record.)

By Mr. Miles:

Q. You say don't you, Mr. McShea, that a substantial part of this is not in existence in the present property of this company? A. I previously said that if the company properly accounted for the retirement of the property at that time.

Q. You think that if they properly accounted for the retirement of the property that that answers the objection I am making to your exhibit? A. I think so.

Q. I do not want to pursue you on one question, Mr. McShea, but you won't state to this Commission that you have personal knowledge of the fact that a very substantial part of the property owned by these predecessor companies is no longer in physical existence? A. That is true of any company.

R. A. McShea, Jr.—For Complainant—Redirect

Q. All right. A. The respondent itself in 1930 may have installed some property which was reflected in the accounts as a cost and later on retired it. Now, that's true of the respondent and of all the predecessor companies, and certainly a lot of the original property is no longer still in existence but has been replaced by other properties. Does that answer your question?

Mr. Miles: That answers my question. That is all, Mr. McShea?

Redirect Examination

By Mr. Miller:


Q. Mr. McShea, I just would like to ask you two questions. With reference to the expense figures in your lag exhibit—that is Exhibit 24—where did you obtain those figures, the expense figures you have used to determine the amount available for return? A. The details or the places where I got the figures for Exhibit 24 are contained on Exhibit 27.

Q. Yes, but Mr. Miles was questioning you with reference to what your expense figures included and whether they included certain expenses which the Commission now allows to a public service company. Did you take your expense figures from company records or reports? A. I did.

Q. And did you exclude any amounts shown in the expense items in those reports or records? A. I excluded some.

Q. And did you exclude any shown in the expense items in those reports or records? A. Well, they were shown in the books or in the reports. In some cases they were amounts for betterments of property, and of course betterments of property are not considered as an expense.

Q. Well, now, did you exclude any items which are now allowed by the Commission as expenses?



R. A. McShea, Jr.—For Complainant—Recross

Mr. Miles: I object to that, your Honor, because the witness has testified on cross-examination that he made no comparison of expenses with the present accounting rules of the Commission.

Mr. Miller: Well, I am asking him what he excluded. He testified that he excluded certain items.

(Discussion off the record. Question withdrawn.)

The Witness: All of the costs of operation and maintenance as shown by the books or by the tax reports, although in all cases earmarked as operation and maintenance, were considered as the operating expenses. Such items as annual depreciation— By the way, none of the companies in those days had charges for annual depreciation—and interests paid on notes, expenditures made for betterments of property, and taxes of various kinds, which are not in effect now but which were in effect then, would not be reflected in this exhibit.

By Mr. Miller:

Q. Would the actual expenses of the company be reflected in the reports and records which you used as a basis for the preparation of the exhibit? A. I believe so. The out-of-pocket expenses for operation and maintenance would be reflected in those records.

Recross Examination

By Mr. Miles:

Q. Then how do you know the accuracy of the last answer you gave to Mr. Miller? In other words, I am asking you how could you tell that those companies actually charged all of their expenses? A. I rely upon the records.

Q. What you are saying is to the extent that the records disclose that they are there? A. That's right.

Q. I believe you did say you found cases where charges

H. Root Palmer—For Commission—Cross

were made to operating expense relating to improvements to property? A. They were necessarily marked as operating expense. The accounts were set up more on the basis of a cash receipt and a disbursement basis, and taking the expenditures or the expenses, I didn't include items of that character.

Q. You also made the observation that practically none of the companies made any annual charge to depreciation; is that right? A. Annual charge to expense for depreciation, and that, I believe, was true of all companies up to 1910, when the Merchants Company had a charge for annual depreciation which was, however, reversed a few years later or in the next year.

Q. Therefore, in your estimate of lag, you have allowed nothing prior to 1910 for depreciation? A. That's right, but I used a non-depreciated rate base.

Q. Wouldn't the fact that those companies didn't make any charges for depreciation indicate to you as an accountant that their books were not kept in respect of and in relation to modern accounting records? A. There were some basic differences; yes, sir.

H. ROOT PALMER, having been duly sworn, was examined and testified as follows:

Cross Examination

By Mr. Miles:

Q. Mr. Palmer, you have testified as to certain reasons why, in your opinion, a substantial part of the central generating plant of the respondent should not be included in a rate base. I should first like to ask you this question: Assuming that the property now constituting that plant continues to be owned and used and operated in exactly the manner as is now the case but that the respondent receives a reasonable profit on the sale of

H. Root Palmer—For Commission—Cross

the steam to the York Steam Heat Company, would you still contend that the property should be allocated to the two companies in the manner shown on Commission Exhibit No. 20?

A. Yes, sir.

Q. Even though that steam is sold at a compensatory rate?

A. Yes, sir.

Q. Now, if we assume that the property constituting that plant continues to be owned, used and operated in exactly the same manner in which it is now used but that it could be demonstrated that it has a specific emergency value in offering the assurance of a continuity of service to the people of York, would you still contend that the property should be allocated in the manner shown on your Exhibit No. 20? A. Yes, sir.

Q. And even if it is shown that it has an emergency value to the company in supplying a continuity of service and even though the steam heat generated by the company is sold to the York Steam Heat Company, you still would allocate the central plant in accordance with your Exhibit 20? A. Yes, sir.

Q. Why? A. The facilities as allocated are necessary, used or useful in connection with supplying the steam heat service with proper reserve capacity. The surplus capacity available for electric generation or standby would be only the excess capacity over the requirements of the steam heating system, the maximum demands of the steam heating system.

Q. Now, before coming to that question of maximum demands, and so I may follow your testimony, let us assume that this central generating plant continued to be owned by the respondent, that the respondent no longer engaged in the sale of steam heat to its affiliate or anyone else but that the property had an emergency value to the respondent, would you still contend that the property should be allocated as shown on your Exhibit 20? A. There is no steam heating system in existence—

Q. Steam heating business in existence. A. —that would depend upon the situation as of that condition.

H. Root Palmer—For Commission—Cross

Q. You mean you have no opinion as to what would be the answer if my hypothesis is assumed to be correct? A. The capacity of the steam generating system is approximately less than one-half of the maximum demand of the Edison Company. Its standby capacity would, therefore, be limited.

Q. Will you state to the Commissioner the circumstances, if any exist, under which you feel that this central generating plant should be all included in a rate base of the respondent?

A. All this property and facilities are used and useful and are used in connection with the supplying of the service to the Edison Company.

Q. You do know don't you, Mr. Palmer, that during 1936 the larger of the turbines in the central plant was operated continuously for fifty-two and three-quarters hours during the time that power was not available from the two sources from which the company receives its power? A. I only know from the testimony at the last hearing.

Q. You mean in making your examination and study leading up to your testimony advocating the conclusion of this central generating plant that you made no personal study of the times when it might have been used for emergency purposes?

A. For the five years, 1931 to 1935, inclusive.

Q. You made such a study? A. Of the generation.

Q. And then, I repeat, you must have known that during 1936 it was used for the period I have suggested; was it not?

A. I made no study of the generating records for 1936.

By the Commissioner:

Q. You made a study of the records for 1931 to 1935, inclusive, the five years? A. Some, but a very small use.

By Mr. Miles:

Q. Do you think that an emergency service such as that to which this plant was put in the flood or in the year 1936 is of

H. Root Palmer—For Commission—Cross

any use to the important institutions and the public of the City of York? A. It might have some.

Q. Now, coming to this question of the maximum demand of the Steam Heat Company, I believe at Page 351 of the record you pointed out that the maximum demand of the steam heating system has been 110,000 pounds of steam per hour. During how many hours of the year has such a maximum demand been realized? A. I don't know the duration of the demand, but the facilities for providing that maximum capacity are required regardless of the period of duration.

Q. Then you don't know that during 1936 it was only an hour that that maximum demand was realized? A. Not the period of time; no, sir.

Q. Didn't you consider that, Mr. Palmer, in making these observations you made in your testimony? A. The maximum capacity provides 110,000 pounds of steam per hour as required, whether one hour or more.

Q. All right. Assuming for the purposes of my question that it happened one hour in each of the past several years, and I think you will agree with me that there are 8,760 hours in a year, so even though in this statement the likelihood of sufficient boiler capacity at any time during the hour would be about one in eight thousand, wouldn't it? A. It might.

By the Commissioner:

Q. Under that premise it would be if those figures are correct? A. On that assumption.

By Mr. Miles:

Q. Do you know whether the maximum rating of the boilers in that central generating station is 227,700 pounds per hour? A. No, sir.

Q. You don't know that? A. No, sir.

Q. You mean you don't know what the maximum rating is? A. Not normal operating capacity for similar equipment.

H. Root Palmer—For Commission—Cross

Q. I am asking you, do you know what is the maximum rating in the central generating plant, not as to whether it could be operated at the maximum rating. A. No; that is uncertain.

Q. What is an estimate? A. What might possibly be done under emergency conditions, but under reliable operation, normal operation—

The Commissioner: The question was: What was the maximum rating of the boilers, and whether it can be operated at that capacity or not has nothing to do with it.

By Mr. Miles:

Q. Do you know what the rating of the boilers is? (No answer.)

The Commissioner: Assuming that they could not be operated at that, in your opinion, but nevertheless the rating might be considerably higher than the operating capacity. Now, the question is as to the rating only.

Mr. Miller: Do you know, Mr. Palmer?

The Witness: 3,280 boiler horsepower rating.

By Mr. Miles:

Q. I will put it to you in a hypothetical way: Assuming that the maximum rating of the boilers in the central generating plant is 227,700 pounds per hour, you don't have any doubt, have you, that they could be operated at their maximum capacity for one hour? A. No, sir.

Q. You don't have any doubt about that? A. No, sir.

By the Commissioner:

Q. Just a minute, now. You have no doubt that they can be operated at their maximum capacity for one hour. Is their maximum capacity for one hour the rating? (No answer.)

Mr. Miles: I think my next question will cover that, Mr. Commissioner.

H. Root Palmer—For Commission—Cross

The Commissioner: All right, go ahead.

By Mr. Miles:

Q. Assuming that the boilers could be operated at their maximum rating for one hour and there would not be any shortage of capacity during the year, and my previous assumption that it was only for one hour during the year according to the records of the company that the maximum was required—

A. The normal standard of rating for boiler horsepower is the evaporation of approximately thirty pounds of water into steam per hour. With 3,280 horsepower installed, the standard rating would be 95,400 pounds of water converted into steam. The 270,000 pounds—

Q. 227,000, I said. A. 227,000?

Q. Yes. A. —would be between 250 and 275 per cent rating.

Q. Well, now, is it or not your opinion that the maximum rating of the boilers is 227,700 pounds per hour, of the boilers in this central plant that we are talking about? A. That is not; no, sir.

Q. You deny that that is the rating? A. Yes, sir.

By the Commissioner:

Q. Let me ask you, Mr. Palmer, a question at this point. As I understand this matter, the rating is a theoretical capacity or an estimate placed on there by the installers of the equipment; that is correct, is it not? A. Yes, sir.

Q. When you buy a boiler the firm sells it to you under certain formula, which I suppose are standard, which give you a rating for the boiler? A. Yes, sir.

Q. And as I also understand it, that is their opinion of what the maximum load that the boiler can deliver operating at peak, is that correct? A. No, sir; that is the standard rating of the manufacturers.

Q. It is the standard rating of the manufacturefs. Now,

H. Root Palmer—For Commission—Cross

the 227,700 pounds of steam—that is the rating according to Mr. Miles—now, can that boiler be operated for one hour or one minute to produce that countage of steam, in your opinion or, rather, that equipment? ■ that too high or too low in actual operation for the one minute or the one hour? Can it be done? A. I have stated that under emergency conditions it might be done, but with the manufacturers' rating of thirty pounds of water per hour, 227,000 would require the evaporation or conversion of water into steam of around seventy-five pounds of water per hour.

By Mr. Miles:

Q. Now, Mr. Palmer, have you made any examination of the peculiar facts in this case for the purpose of telling me whether you know or not in the company's experience with this equipment, the maximum capacity of those boilers is 227,700 pounds per hour? A. I don't quite get your question, Mr. Miles.

The Commissioner: Read the question.

(Question read.)

The Witness: No, sir.

By Mr. Miles:

Q. You don't know? A. I don't know whether they have been operated at that or not, no, sir.

Q. Well, assuming that they had been operated at that capacity for one hour, there would be no shortage of capacity at any time during the year, would there, if those boilers were capable of being operated for an hour at that capacity?

A. A shortage of capacity for what purpose?

• Q. For the purpose of meeting both the electric and steam requirements simultaneously. A. There would be a shortage.

H. Root Palmer—For Commission—Cross

The Commissioner: To meet the requirements of the electrical current for which it is being operated as an emergency—

Mr. Miles: Your Honor, during the time that it is being operated at its capacity through the process of lost heat certain electrical energy is manufactured.

The Commissioner: Yes, I understand that, but do you mean operating at that maximum capacity, which would supply all of the electrical energy required in York with the failure of the normal source of supply; is that what you mean?

Mr. Miles: That's correct, sir; all that it can produce.

The Commissioner: All that it can produce?

Mr. Miles: That's right.

The Commissioner: Would that meet the normal requirements of York if all the other supplies were not available?

Mr. Miles: It would not meet the peak requirements of York; it would meet the normal requirements, but I am trying to get this witness' opinion as to whether if this plant was operated for an hour at its full capacity, it could produce all the electricity that the company could generate and meet the maximum steam requirements at the same time?

The Witness: No, sir.

By Mr. Miles.

Q. It would not? A. No, sir.

Q. Why not? A. 227,000 pounds of steam per hour produced by the boilers would produce, if the electric generating capacity was available, 11,400 k.w. If that hour was during the maximum demand of the steam heat system of 110,000, it would produce approximately 6,000 k.w.

H. Root Palmer—For Commission—Cross

Q. And the total capacity is 6,700, is it not? A. The total capacity?

Q. 6,700 k.w.? A. Yes; of the two turbines.

Q. And under your assumption the bigger turbine would be operating at the same time? A. Yes, sir.

Q. And now, Mr. Palmer, this plant is regarded by the company as a standby or emergency plant. Is it customary to provide reserve equipment in a standby? A. No, sir.

Q. So therefore there is sufficient capacity in that plant to meet the requirements of a normal reserve or standby plant, isn't there? A. For steam heating service.

Q. I am talking about electricity. You don't suggest, do you, that where a company operates and keeps hot the boilers of the plant for emergency purposes that it must be a plant that is capable of meeting the entire peak load or capacity of the company's requirements? A. No, sir.

Q. And don't you feel that this plant has sufficient capacity for reserve purposes? A. No, sir.

Q. Why not? A. Not steam boiler capacity.

Q. What would you add to it for the purpose of making for sufficient capacity, in your judgment? How much additional capacity, in other words? A. If you are providing a reserve for the entire requirements of the Edison Company, it would require the capacity of their maximum demand.

Q. In other words, then, it is your conception that a reserve or emergency unit must have sufficient capacity to meet the maximum demands of the company in question? A. If it's a full reserve; yes. If it is a partial reserve; no.

Q. What are the chances of the emergency occurring under the maximum steam peak? A. Ordinarily that is the time that those things happen, when the facilities are being operated at those capacities.

Q. Did it last year? It happened last year; did it happen at the peak then? A. The flood?

H. Root Palmer—For Commission—Cross

The Commissioner: That was in March, about the middle of March?

Mr. Miles: The 19th of March, I believe, sir.

A. It did not.

By Mr. Miles:

Q. Do you know of any year when it did happen to this company? A. I haven't checked those.

Q. I see. Well, if this company has got no use out of this plant as a standby or an emergency unit, would you recommend that the additional investment be made to bring it up to the capacity to meet this peak load? A. No, sir.

Q. Now, Mr. Palmer, you have told me that in your opinion this generating plant should be allocated in the way you suggest on Exhibit 20, even though the steam is sold at a compensatory rate and even though it has an emergency value. Now, I want to ask you to assume that the property of the plant continues to be owned, used and operated in exactly the same manner as is now the case, that as result of its existence and operation in that manner a better rating can be obtained for the energy requirements purchased by the company; do you still contend that it should be allocated in the manner reflected on your Exhibit 20? A. Yes, sir; the facilities as allocated.

Q. So that you stick to Exhibit 20, even if the steam is sold at a compensatory rate, if the plant has an emergency value, and if it permits the respondent to purchase energy at a price cheaper than it could otherwise purchase it? A. That allocation does not take into consideration—or takes into consideration only the facilities used and useful and required in providing the steam heating service,—

Q. And you have— A. —regardless of what uses may be made of it.

H. Root Palmer—For Commission—Cross

Q. And you have included all three of the factors I have suggested as being properly considered in determining the extent to which this central plant is used and useful, haven't you? A. Yes, sir.

Q. And you think that you should ignore all three of those factors? A. In considering the facilities used and useful for steam service; yes, sir.

Q. You are not making and considering a rate for steam heating, but you are making and considering a rate base for the electric company and having that thought in mind, I will ask you again: In determining the rate base of the Edison Electric Light & Power Company you are of the opinion that this central generating plant should be allocated in the manner set forth on Commission Exhibit 20, even if, first, the plant has an emergency value; second, the steam heat generated there is sold at a profit; and third, it permits the respondent to purchase energy at a cheaper rate than it could otherwise do? A. Yes, sir.

Mr. Miller: Will you now explain, Mr. Palmer?

Mr. Miles: I assume he will if he wants to, won't he?

Mr. Miller: I assume he will.

The Witness: I have covered that in previous testimony as to the facilities required and used and useful in providing the steam heating service.

By Mr. Miles:

Q. And you contend further, do you not, Mr. Palmer, that the identity of the owner of the central generating plant has nothing to do with the question as to whether it should be excluded in part or in whole from the rate base of the respondent? A. I have given no consideration to the ownership—only to the value of the facilities used and useful.

Q. And that has always been ignored by you in your studies? A. Yes, sir.

H. Root Palmer—For Commission—Cross

Q. Now, if you will refer to Exhibit 20, on Sheet 6, under the item described as "Allocated cost of generation by steam power," you show for Account 352 a total cost of \$7,965.78, and which you allocate to steam generation— A. For what year is that?

Q. Sheet 6, on which you allocate to steam generation \$3,186. A. That's for 1935.

Q. All right. Now, isn't it true that according to the classification of accounts prescribed by this Commission, Account 352, engine labor is related only to the cost incurred in operating electrical generating equipment? A. Yes, sir.

Q. Why then have you allocated a portion of that labor to steam generating equipment, or expressed in another way, don't you know that is a violation of the accounting rules of the Commission? A. No, sir.

Q. Why not? The accounting rules require us to charge it to electric generating equipment. A. The plant is being operated at the present by the Edison Company as an electric generating plant. The allocation covers part of the engine room labor which would be required, such as oilers, and wipers, and machinists, and others operating the engines and turbines in connection with the boiler plant and auxiliaries to the steam boiler generating equipment.

Q. Have you or not given any consideration to the Commission's accounting rules with respect to the treatment of engine labor under Account 352 in making the allocation that you suggest? A. That would be allocated to the proper account under steam heating service.

Mr. Miles: Would you mind reading my question?

(Question read.)

The Witness: Yes, sir.

H. Root Palmer—For Commission—Cross

By Mr. Miles:

Q. And you think you have complied with that accounting regulation? A. Yes, sir.

Q. Now, is that labor, the engineroom labor, to which you have referred to there, used only in the turbine room? A. No, sir.

Q. It is not? A. No, sir.

Q. Where is it used other than in the turbine room? A. It is used in the entire plant, electric and steam operation.

Q. Is it possible, in your opinion, that you have confused Account 351 and Account 352 in the distribution of these costs?

A. No, sir.

Q. Now, in Account 355, relating to fuel on Sheet 6 of your Exhibit 20, you have allocated all of your costs of fuel to steam generation, have you not? A. Yes, sir.

Q. Isn't it true that Commission Exhibit 6 on Sheet 29 shows that for 1935, 3,161,700 kilowatt hours were generated at the central generating plant? A. Yes, sir.

Q. Now, on Exhibit 20, Sheet 6, you have allocated all of the costs of fuel to steam generation, have you not? A. Yes, sir.

Q. Well, in your judgment, wouldn't it be necessary to allocate against the Electric Company the cost of the fuel consumed for the generation of making kilowatt hours? A. No, sir. That is the cost of producing the steam.

Q. And you think, therefore, that the respondent company should get that for nothing? Do you understand my question? I say, you think that the respondent company should get that energy for nothing, without any charge for fuel? A. No, sir.

Q. Well, then why did you charge against the respondent company certain fuel expenses for the generation of that many kilowatt hours? A. That was covered by the charge for steam to the steam heating company.

H. Root Palmer—For Commission—Cross

Q. But you are analyzing these operating expenses of the company? A. Yes, sir.

Q. All right. Now it obviously cost a certain amount of fuel to generate so many kilowatt hours, and doesn't necessarily follow that that fuel should be charged against the company that gets the benefit from it? A. No, sir; not a direct charge.

(A recess was here taken until 1:45 o'clock p. m.)

AFTER RECESS

H. ROOT PALMER, resumed for further cross-examination.

By Mr. Miles:

Q. Have you studied any of the history relating to the development of the central generating plant and especially the reasons for which it was originally built by the respondent?

A. No, sir.

Q. Do you know why it was originally built by the respondent? A. No, sir.

Q. Do you mean by that that you have not any information as to whether it was originally built for the purpose of generating electricity or for the purpose of manufacturing steam?

A. In my opinion it was built as an electric generating station.

Q. And don't you know that the company was not in the steam heat business at the time that the generating plant was built, to any appreciable degree? A. I don't know, but I believe that's correct.

Q. Now, if the generating plant was built by the company for the purpose of generating electric energy to be sold to the public generally, would that fact in any way influence your judgment as to the propriety of the allocation of the central

H. Root Palmer—For Commission—Cross

generating plant in the manner that you have made that allocation on Exhibit 20? A. No sir. My allocation is based on the facilities used and useful in connection with supplying the steam heating service.

Q. And you think that the reasons that motivated the management to build the generating plant have nothing to do with that, is that right? A. Not with my allocation; no, sir.

Q. The point is, you would have made the allocation just as you have made it regardless of that fact, and whether the steam was sold at a compensatory rate and the other factors just mentioned? A. It is my judgment of the facilities used and useful.

Q. Now, Mr. Palmer, if you will be good enough to refer to Exhibit No. 7, which is the wholesale power agreement between the Edison Light & Power Company, the Metropolitan Edison Company, Pennsylvania Water & Power Company, and Safe Harbor Water Power Corporation, and refer to Article 8 of that agreement. Will you read into the record that article, which consists of just one sentence? A. (Reading) "Article 8. Steam Electric Generating Plant. The York Company, York, Pa., agrees to maintain its present steam plant for emergency and standby service."

Q. Would the plant have any considerable value for emergency or standby purposes unless you maintained at least one boiler hot at all times in the year? A. It would have more value if it was maintained with one boiler hot.

Q. It would have practically no value if it was not maintained with one boiler hot, would it not? A. Very small.

Q. And now, will you be good enough to look at the second sheet of that power agreement, which is Commission Exhibit No. 7, and I refer you to Article 3, which sets forth a definition of the phrase "Contract requirements of the York Company."

H. Root Palmer—For Commission—Cross

The Commissioner: Page 2 of the agreement.

By Mr. Miles:

Q. Will you read that article and state whether the first paragraph of that article sets forth the energy and describes the energy to be supplied under the agreement? A. Read it into the record?

Q. No; you just read it to your self and tell me whether you agree with that. A. What was the question?

(Question read as follows: "Will you read that article and state whether the first paragraph of that article sets forth the energy and describes the energy to be supplied under the agreement?")

A. It does.

By Mr. Miles:

Q. And sub-paragraphs A, B, C and D are the exceptions, are they not, to the obligation of the York Company to purchase energy under the agreement? A. Yes, sir.

Q. Will you be kind enough to read, which is very short, sub-paragraph A of Article 3 of the power agreement? A. (Reading) "Such electrical power and energy as said York Company may generate in connection with the supplying of steam for heating or for the protection of the service or for the purpose of maintaining its generating plant in readiness to serve."

Q. And now, that is one of the excepted classes of energy, so to speak, which it is not required to purchase from the selling companies under the agreement; is it not? A. Yes, sir.

Q. Now, wouldn't you say, Mr. Palmer, in the light of that specific provision that there is an obligation upon the York Company to maintain a hot standby plant?

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Mr. Miller: Mr. Commissioner, I do not think it is for Mr. Palmer to interpret the contract. It speaks for itself.

Mr. Miles: Your Honor, the only reason I am asking Mr. Palmer is because he has made—he has been offered here as an expert, and has made on the record many observations as to the reasons why the allocation should be in accordance with Exhibit 20, and under examination this morning he testified that he would adhere to those allocations even though the company was required to maintain it as a generating plant.

The Commissioner: I think it is a proper question from my viewpoint, not being a lawyer, and it seems to me that the answer does not require any expert or legal knowledge, but that it is a matter of plain, English common sense in the reading of that clause there.

Answer the question, if you can.

The Witness: What was the question?

(Question read as follows: "Now; wouldn't you say, Mr. Palmer, in the light of that specific provision that there is an obligation upon the York Company to maintain a hot standby plant?")

The Witness: No, sir. That paragraph makes an exception, "as said York Company may generate." It carries no obligation to generate or maintain a hot plant. It is optional with the York Company.

By Mr. Miles:

Q. Have you read this entire agreement? A. No, sir.

Q. You have not read this agreement before testifying in this case? A. No, sir.

Q. Well, then your testimony as to the allocation of this

H. Root Palmer—For Commission—Cross

plant was made without any knowledge of the respondent's obligations under this agreement; is that correct? A. As far as the contract is concerned; yes, sir.

The Commissioner: As a matter of fact the contract, Mr. Miles, was offered after Mr. Palmer had testified, as I remember. Is that so?

Mr. Miller: I don't recall, Mr. Commissioner.

Mr. Miles: I don't doubt that, Mr. Commissioner.

By Mr. Miles:

Q. And it is a further fact, is it not, that you would adhere to your allocations on Exhibit 20 despite any of the provisions of this agreement? A. Yes, sir; on the basis of my allocations, yes, sir.

Q. Even without knowing what the agreement says? A. My allocation is based upon the facilities used and useful in connection with supplying steam service.

Q. And you would adhere to those allocations without any knowledge as to what might be contained in this power contract? A. Yes, sir.

Q. And now, do you know the capacity of the Violet Hill sub-station through which energy is received by the respondent from Pennsylvania Water & Power Company? A. No, sir.

Q. Do you know the capacity of the Smith Street substation from which energy is received from the Metropolitan Edison Company? A. No, sir.

Q. Do you know what is the peak demand of the Edison Light & Power Company? A. As I recall, 16,500 k.w. That is from memory.

Q. Mr. Palmer, am I to understand that you have made this allocation, that you propose, without any knowledge of the capacity of energy that is available to the respondent through this contractual arrangement with the Pennsylvania Water &

H. Root Palmer—For Commission—Cross

Power Company or the Metropolitan Edison Company? A. Yes, sir.

The Commissioner: Do you contend or are you going to contend that the Pennsylvania Water & Power Company and the Metropolitan Edison Company and the Safe Harbor cannot supply the maximum demand to the Edison Light & Power Company with their present facilities and the arrangement?

Mr. Miles: I am going into the K.v.a. capacity of each one of those substations.

The Commissioner: Yes, I understand that, but is it your position that those companies under that contract—either under the contract or through the capacity facilities cannot supply the maximum load?

Mr. Miles: Our position is that neither one by itself can supply it.

The Commissioner: Neither one by itself can supply it, but they are both there?

Mr. Miles: Yes; but if either one is out, it certainly seems a reasonable proposition that it goes to the question of the emergency plant.

(Discussion off the record.)

By the Commissioner:

Q. Did you eliminate all or any part of the plant for the generation of electricity? A. Yes. There was one engine in the electric generating end and the conversion equipment in connection with the sale to the York Railways Company was optional,—either eliminate from the electric rate base or provide a compensatory rate for it.

By Mr. Miles:

Q. I understand, when we left off our discussion, that you testified that you did not know the capacity of either the Violet

H. Root Palmer—For Commission—Cross

Hill station of the Pennsylvania Water & Power or the Smith Street substation of the Metropolitan Edison? A. No, sir.

Mr. Miller: Mr. Commissioner, I object to that question as irrelevant since Mr. Palmer has stated that the basis of his allocation was properly included in the rate base of the steam heat plant, that he included all property which he thought was used and useful in the generation of steam under the steam heat plant as property which would be available for use or used in that service of supplying steam to the steam consumers, and that they should pay the return on that property investment, and he eliminated from that rate base the property which would be used in the electric service on which the electric rate payers should pay.

The Commissioner: I understood Mr. Palmer to say that he had eliminated from the rate base any part of this steam heating plant—

Mr. Miles: —which he considered non-useful, I think he said.

The Witness: It had been allocated to the production of steam.

By Mr. Miles:

Q. Has any part of this plant been allocated to the production of electricity in your calculation for the Edison Light & Power? A. I have eliminated no electrical generation with the exception of the engine. It remains in the appraisal.

The Commissioner: I think your objection, Mr. Miller, does not go to the question that Mr. Miles is now asking. I think it is perfectly proper for Mr. Miles to ask Mr. Palmer whether he knows the capacity of those two energies to the Edison system.

Mr. Miller: I don't see, Mr. Commissioner, what that

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has to do with the allocation of the property in the steam heat plant.

The Commissioner: Let us find out.

By the Commissioner:

Q. You answered, you didn't know, did you? A. Yes, sir.

By Mr. Miles:

Q. Do you know the peak demand of the respondent? A. As I recall, it was 16,500 k. w.

Q. Well, do you know whether or not either of the two substations that I have referred to have sufficient k.v.a. capacity to supply the peak demands of the respondent?

Mr. Miller: I will object to that, Mr. Commissioner, as immaterial, in view of the basis which Mr. Palmer has testified he used in making his allocation to the steam plant.

(Objection overruled.)

A. No, sir.

By Mr. Miles:

Q. But if you knew it would not affect the manner in which you regard it as proper to allocate the generating facilities between the two companies, would it? A. No, sir.

Q. Do you know that wholesaling companies are required under the contract to supply energy for the entire load of the Edison Company in the event of the failure of either one of the selling companies to deliver? A. I do not.

Q. Would knowledge on that subject affect in any way the manner in which you allocated these generating facilities? A. No, sir.

Q. In order, Mr. Palmer, that I may follow what you have done will you state under what circumstances you regard the

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generating facilities of this company used and useful and properly in the rate base? A. The value of electric generating facilities as standby or reserve would depend upon the time and conditions at which that estimate was made. If such an estimate was made at the time of the maximum demand on the steam heating system, there would be very little surplus capacity except the use of the reserve boiler for the steam heating service, to be used in connection with electric generation. If the estimate was made at the time when the steam heating requirements were minimum or not in operation, the facilities for electric generation would be greater.

By the Commissioner:

Q. Well, Mr. Palmer, in line with the question asked you previously by Mr. Miles as to the conditions at the time when this demand was made on this standby service last March, in connection with that and in connection with your last answer, I would like to ask you this question: Suppose, for example, we had—although we do not, suppose we had at this time flood conditions that were comparable to those in the Ohio Valley at this time, where they have freezing weather in the territory affected, if they had anything comparable to those flood conditions—probably either of these companies or perhaps certainly one of them—we would have reason to expect that their facilities would be out of commission and that it would require this standby service. Now, with such temperature and conditions as they have in the Ohio Valley, then under your theory wouldn't the maximum capacity, probably practically the greater part of the capacity of that plant be absolutely required for the furnishing of steam? A. Yes, sir.

Q. And, therefore, would not be available in anything like a reasonable capacity for this standby service for electricity; is that right? A. Yes, sir.

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By Mr. Miles:

Q. Why would you say that the maximum capacity is needed for delivery to customers?

(No answer.)

The Commissioner: Perhaps I may have misphrased my question. I meant that the maximum steam demand would be required at that time, because that is the time when it is required—in cold weather, isn't it?

Mr. Miles: But only practically momentarily, Mr. Commissioner.

The Commissioner: Well, the demand would be greater than in warmer weather.

Mr. Miles: We have a graphic chart that shows the demand, Mr. Commissioner.

The Commissioner: As I understood your question, perhaps I erroneously understood it, you were indicating the last year weather conditions which were bad as to temperature; weren't you?

Mr. Miles: No. I was asking the question; whether at the time of the flood of last year these facilities had to practically carry the entire load.

(Discussion off the record.)

By Mr. Miles:

Q. You don't know whether, during the flood conditions last year, the Electric Company ran at full capacity, generated its full capacity and at the same time took care of the steam situation, do you? A. I do not.

Q. And if you did know it would not affect your allocation of these facilities, would it? A. No, sir; it would not.

Q. Mr. Palmer, assuming that the central generating plant is a standby plant and maintained for that purpose, in your

H. Root Palmer—For Commission—Cross

opinion does that fact make the generation of the steam a by-product or a principal product? A. Under the conditions of the plant of the York Company the Steam production for heating service is the principal operation of the plant.

Q. And you are of that opinion regardless of whether the generating plant is maintained as an emergency unit or not?

A. Yes, sir. A very small proportion of the total steam produced in that plant is used in electric generation, direct electric generation. There is some used through the steam heating turbine.

Q. And now, isn't it a fact that in the revenue derived from the use of the central generating plant over and above the cost of additional fuel necessary to maintain it as a hot standby constitutes a reduction in the cost of the power to the respondent? A. I don't know.

Q. You don't know? A. I don't know.

Q. You have not given any consideration to that factor in determining the cost of generating the steam? A. There is no specific item set forth in the contract to provide what, if any, effect that has on the purchase price.

Q. Do you know of any additional expense to which the respondent is put in connection with using that plant for the generation of steam that he would not incur in order to maintain it as a hot standby plant except the cost of the additional fuel?

Mr. Miller: Mr. Commissioner, I must object to that as improper cross-examination and irrelevant, in view of Mr. Palmer's theory of allocation, that the steam heating plant should not be included in the rate base of the Electric Company any more than the other facilities owned by a private corporation or a private individual, which are available to the Electric Company, should be included in the rate base of the Electric Company. They can buy electricity from the steam heating company and the cost

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of that electricity, in emergencies or in ordinary times, should properly be included in their operating expenses and the allocation of the property should not be affected, and on the theory that Mr. Palmer has testified to and the theory on which he has presented his testimony should not be affected by the items which Mr. Miles is now cross-examining him on.

The Commissioner: I think that the objection of Mr. Miller is sound in that respect, because Mr. Palmer has repeatedly stated, in answer to the questions, that under any circumstances, either the failure of either one of these two companies ~~to have the ability~~ to deliver the maximum demand or any of the other factors—he says that he adheres to his set-up as set forth in Exhibit 20. Under those circumstances it seems to me it is futile to cross-examine him further on that theoretical situation or actual situation, because he adheres to his theory or his hypothetical basis as set forth in Exhibit 20, and I think that is as clear as it can be.

Mr. Miles: Except this, your Honor: There comes a time when the Commission will consider this record.

The Commissioner: That is true, Mr. Miles, but you have your witnesses and you can present any picture that you think is the true one and that will be in the record also. I understand the witness says that under no circumstances would he deviate from his Exhibit 20.

(Discussion off the record.)

By Mr. Miles:

Q. Is it a fact, Mr. Palmer, that you can conceive of no circumstances that would justify the allocation of the central generating facilities in any manner other than that you have placed upon them in Exhibit 20?

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Mr. Miller: I do not think that is quite a fair question, Mr. Commissioner.

The Commissioner: If you will add to that: Under the circumstances as developed by his investigation.

Mr. Miles: That is quite all right, sir, with me.

The Witness: What is the question?

(Question read as follows: "Is it a fact, Mr. Palmer, that you can conceive of no circumstances that would justify the allocation of the central generating facilities in any manner other than that you have placed upon them in Exhibit 20?")

By Mr. Miles:

Q. Based upon your investigation?

The Commissioner: And knowledge of the situation in this case?

The Witness: No, sir.

By Mr. Miles:

Q. And you think that you have investigated and considered all of the facts that are relevant to this question? A. Yes, sir, for the purpose for which the allocation was made.

Q. Now, Mr. Palmer, referring to Page 370 of the record, is there not an error in your statement given at the bottom of Page 370 and carried over to Page 371, in which you said that the total generating cost and operating cost of the steam plant was \$139,498.98 and the subsequent computations based upon that figure? The point is, did you not fail to deduct \$25,443, which you have allocated on Sheet 6 of Exhibit 20 to the transmission group of sub-stations? Maybe I can clarify it a little bit more by calling your attention to the column headed "Total Cost" on Sheet 6 of Exhibit 20. Now, that, as I understand it, is intended to represent the total cost incurred in connection

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with the generation of steam, is it not? A. Yes, sir; the total cost of operating the steam plant.

Q. The whole steam situation? A. Yes, sir.

Q. The total cost of operating the entire central generating plant, is that right? A. Yes, sir.

Q. Well, now, did you not have deducted from that figure for the purpose of arriving at the allocation which you have made in your testimony, the figure of \$25,443, which you show in the column headed "Transmission Group"? My point is: I think you made an inadvertent error in your testimony that is not made in your exhibit and I merely wanted to know whether you desired to correct it? A. The \$25,443 is included in the total cost of operating the generating station, and deducting that from the amount allocated to steam generation, on Page 6 of Exhibit 20, leaves a difference of \$36,601.

By the Commissioner:

Q. If you had 25 and 11 you would get 36, and if you deduct 36 from 138 you would get 102, wouldn't you? A. The total cost of operating the steam plant was \$139,498.98.

By Mr. Miles:

Q. The point, if it will be helpful at all, that I am trying to develop is that the exhibit is correct on your theory, but when we come to your consideration of it on Page 371, where you get the net cost of generating, the \$40,973 is incorrect by the amount of \$25,443. Now, will you check me and see whether that is right or not? A. Yes, sir; the \$40,973 is correct, and is included in the annual report of the company in the generating group. In the allocation (Page 6, Exhibit 20) that \$40,000 has been allocated between the transmission group and electric generation group.

Q. You are convinced that your figure of \$40,973 is correct, on Page 371? A. Yes.

H. Root Palmer—For Commission—Cross

By the Commissioner:

Q. Mr. Palmer, can you reconcile that figure of \$40,000 on Page 6 of Exhibit 20? A. No, sir.

Q. It can't be done from that? A. No, sir.

By Mr. Miller:

Q. Are they comparable figures? A. No; they are not comparable figures.

By the Commissioner:

Q. Where did you get that figure? A. From no exhibit that has been submitted. That was read from memoranda.

Q. Made by you? A. Yes, sir.

Q. And those statements on Page 371; that is, the figures there, do they reconcile with Exhibit 20, Page 6? A. They are not comparable.

Q. They are not? A. No, sir. Page 371 takes into consideration the credit for steam sold to the heating company and Exhibit 20 does not; it just allocates the operating expenses.

By Mr. Miles:

Q. Mr. Palmer, I forgot to ask you this morning when I propounded several hypothetical questions based upon our hypothesis of this case, whether your allocation, in Exhibit 20, would be changed or affected in any way if the facilities continued to be owned, used, and operated as at the present, but all energy was sold to the York Railways Company at a profit. A. No, sir; the allocation did not take into consideration those factors.

Q. And such questions as the power factors, the load of the York Railways Company, and power factors of the Edison Light & Power Company would in no way affect your judgment as to the allocation, would they?

Mr. Miller: Mr. Commissioner, I dislike to object so much, but I do not want to be taken as admitting that

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these hypotheses propounded by Mr. Miles are proper in any way or represent a proper theory of allocation. I want to place my position on the record with regard to that, and I certainly intend to object to any testimony to be presented by the respondent in support of these hypotheses.

By Mr. Miles:

Q. You have eliminated \$84,000 in the reproduction cost of the respondent's property on the theory that that much of it is properly allocable to the York Railways Company, have you not? A. Either that or adjustment of the rate.

Q. Yes; but you have chosen—and I think your exact language was, you have chosen as between the two alternatives to eliminate it from the reproduction cost, have you not? A. Yes, sir.

Q. You have taken it out of the rate base? A. Yes, sir.

Q. And your judgment as to the propriety of doing that would not be affected, would it, by the ownership, and no matter how it was continued to be used? A. No, sir.

Q. Do you know what the power factor of the York Railways Company load is? A. I do not.

Q. Do you know what is the power factor of the Edison Company's load exclusive of the Railways' load? A. I do not.

Q. Have you any approximate idea what those loads are, power factors I mean? A. Well, my judgment would be that the railway load supplied through the rotary converters as operated would average between ninety and ninety-five per cent and possibly at times a little higher.

Q. Now, what about the power factor of the Edison Light & Power Company load; do you have any opinion as to the approximate power factor?

The Commissioner: Exclusive of the York Railways'!

H. Root Palmer—For Commission—Cross

Mr. Miles: Yes; exclusive of the York Railways'.

The Witness: No; I don't know exclusive of the York Railways'. The power factor of this system including all loads probably averages between eighty and eighty-five per cent; at least that is the power factor provided for in the purchase power contract.

By Mr. Miles:

Q. Isn't that eighty or eighty-five per cent after correction?

A. That's the provision for maintaining eighty-five per cent or eighty per cent power factor.

Q. After correction? A. That's the total of the system. Now, separating the railway load from it, I don't know.

Q. You don't know what it is before correction as distinguished from after correction? A. I do not. My understanding of the operation was that on Monday and Tuesday of each week the large turbine, the 5,000 k.v.a. turbine, is operated for from seven to nine hours, from about seven o'clock until three or four o'clock in the afternoon to correct for power factor and voltage on the Edison Company's system.

Q. Well, do you know whether the Railways' load has any considerable effect upon the power factor correction? A. I don't know.

Q. Well, if it has any effect whatever it would represent savings to the Edison Light & Power Company, wouldn't it? A. If of sufficient magnitude; yes.

Q. Do you know what is the coincident demand of the Railways Company? A. No, sir. I was advised that the demand was between nine hundred and a thousand k.w.

Q. Well, it isn't coincident with the maximum demand with the rest of the Edison Light & Power's load, is it? A. I don't know.

Q. Well, if the load of the Railways Company were discontinued, would it have the effect of increasing or decreasing

H. Root Palmer—For Commission—Redirect

the average cost of purchased power; if you know? A. I don't know. I made no study of that.

Q. And you gave no consideration to any of those factors when you chose to exclude—adopting your own language—the \$84,000 in the rate base of the Edison Company, did you? A. No, sir. I did have in mind a provision in the company's general rules and regulations filed with the Commission, P. S. C. Pa. No. 8, effective February 7, 1935: "The consumer shall pay the cost of any special installation necessary to his particular requirements for service at other than company standard voltage."

Q. What application does that have to this situation? A. The company is providing special equipment for that particular customer—

Q. Yes. A. —at a different voltage, not standard voltage. There is no other customer using the six hundred volts direct current except the Railways Company.

Q. When was the order passed, which you just read? A. It was filed effective February 7, 1935.

Q. And of course that equipment has been in place and in service for many, many years prior to that date, has it not? A. I assume so.

Q. Now, Mr. Palmer, the identity of the owner of the \$84,000 worth of property which you assigned to the Railways Company has nothing to do with your conception or approach to the exclusion of it from the rate base, does it? A. No, sir.

Redirect Examination

By Mr. Miller:

Q. This P. S. C. Pa. No. 8 to which you referred as requiring the consumer to bear the cost of the facilities necessary for altering the voltage for service to the customer, is that an order of the Commission or a tariff filed by the respondent

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L. C. Bierman—For Commission—Cross

itself? A. It is in the general rules and regulations in the tariff filed by the company.

LINN C. BIERMAN, having been duly sworn, was examined and testified as follows:

Cross Examination

By Mr. Miles:

Q. Mr. Bierman, referring to the one exhibit which you call Commission Exhibit No. 31 and your testimony as to the cost of financing. I should like to ask you whether or not with one exception all of the securities listed on that exhibit do not represent bonds sold by public utilities? A. I believe that's correct, sir.

Q. Well, now, is it your opinion that the common stock of the Edison Light & Power Company could be sold on a basis as favorable to the company as an issue of first mortgage bonds? A. No; I don't believe it could be.

Q. In making your estimate as to the commissions or underlying charges which would likely be incurred by the respondent under the reproduction cost theory, you have assumed, have you not, that it would sell bonds as distinguished from stock, as it now has outstanding? A. Yes.

Q. So that by the reproduction cost theory, if you were reproducing this company with its existing capital, you would raise your estimates as to the cost of financing, would you not, over and above that mentioned in your testimony? A. I believe I used a higher figure, a somewhat higher figure than that shown by this exhibit.

Q. Let us put it this way: You used a figure of two and a half per cent as representing the commissions or underlying

L. C. Bierman—For Commission—Cross

payments that the Edison Company would be required to pay?

A. That's right.

Q. And now, isn't that about comparable with the average figure of these various bond issues that you referred on Exhibit 31? A. As I remember, the average figure was somewhat less than two and a half per cent.

Q. On this exhibit (indicating)? A. Yes. That's a weighted average.

Q. Well, regardless of what the weighted average is on the exhibit, is it your opinion that that company could finance common stock on the basis of two and a half per cent commission or discount? A. I believe they could.

Q. Can you give me any illustration that you have to support that observation? A. No; I can't.

Q. Do you know of any company that has been able to do that in the past two or three years? A. I do not.

Q. Therefore it is, frankly expressed, a guess on your part, is it? A. It's an opinion.

Q. An opinion but based on no precedent that you have any knowledge of; is that right? A. That's right.

Q. Now, Mr. Bierman, in your allowance on Exhibit No. 31 and your testimony with respect thereto of one-half of one per cent to take care of what you termed the mechanical costs in connection with the cost of financing, did you give any consideration to the expenses incurred incident to the registration of securities with the Securities and Exchange Commission? A. I really used a weighted average of the amount shown here and I don't know whether it included that or not.

Q. Is it not a fact that you didn't have that in mind when you made up this exhibit? A. I really worked from this tabulation (indicating).

Q. And you gave no thought to that increased cost? A. That's right. All I worked from was this tabulation (indicating).

L. C. Bierman—For Commission—Cross

Q. So that that increased cost is not included in the tabulation; it is not reflected in your estimate, is it? A. That's right.

Q. Have you any opinion as to what it would cost the respondent to register with the Securities and Exchange Commission an issue of, say, three million dollars of bonds? A. No; I do not.

Q. Referring to your testimony on Page 151 of the record, Mr. Bierman, wherein you suggest the elimination from the Day & Zimmermann overheads as contained in their 1934 appraisal, under Structural Accounts, of certain allowances of contractors' profits, contractors' overheads, omission and contingencies, and architect fees, is it not a fact that those overheads are applied to a relatively small percentage of the structural accounts included in that appraisal? A. Yes; that's right.

Q. And dollarwise it amounts to a trifling sum? A. That's right.

Q. I wish you would look at Page 151 of the record and see where you have enumerated those allowances which I have just enumerated in Day & Zimmermann's appraisal as thirty per cent, where you have suggested twenty-seven per cent. A. As I remember that particular item, I think it was pyramided.

Q. But your own testimony gave certain allowances. A. Twenty-seven per cent or thirty per cent, but as a matter of fact it is actually thirty per cent as stated in the appraisal; that is, certain items are pyramided on top of other items.

Q. And that is what you meant by the thirty per cent? A. That's what I meant by the thirty per cent.

Q. Isn't it a fact that the reproduction cost estimates submitted in this case were confined solely to the reproduction cost estimates made by Day & Zimmermann, Incorporated, as of June 20, 1934, less certain deductions therefrom as testified to by Mr. Palmer, less certain deductions in overheads? A. That's right.

Theodore E. Seelye—For Respondent—Direct

Q. And isn't it a fact that you have not made a personal inspection or appraisal of the respondent's property for the purpose of forming any independent opinion as to its reproduction cost? A. Yes, sir.

Mr. Miller: No questions, Mr. Commissioner. That is all.

EVIDENCE ON BEHALF OF THE RESPONDENT

THEODORE E. SEELYE, having been duly sworn, was examined and testified as follows:

By Mr. Miles:

Q. Will you state, please, your present occupation? A. I am vice-president of Day & Zimmermann, Incorporated.

Q. And what is the business of Day & Zimmermann, Incorporated, and their experience in connection with the conduct of that business? A. Day & Zimmermann, Incorporated is an engineering corporation consisting primarily of a group of consulting engineers who are engaged in engineering reports of various characters, public utility properties, industrial properties, and other types of business. They have been engaged in ownership, operation, and management and construction of public utility properties and they engage in reports and appraisals for financing, rate litigation, and other purposes of public utility properties in various states. If it would be of assistance to you I can cite—

Q. I think it might be well for the purposes of the record to cite some of the investigations and reports that Day & Zimmermann have had occasion to make.

The Commissioner: I do not want to interrupt but I think that the Commission's counsel is ready to con-

Theodore E. Seelye—For Respondent—Direct

cede the qualifications of Day & Zimmerman, Incorporated.

Mr. Miller: Certainly, we admit Mr. Seelye's qualifications.

Mr. Miles: If your Honor will permit me, I do not want to delay it and appreciate the offer in regard to Day & Zimmermann, but I would like to have Mr. Seelye's qualifications appear as a matter of record.

The Commissioner: As you choose.

By Mr. Miles:

Q. Mr. Seelye, will you state what has been your own experience in connection with the construction, operation and valuation of public utilities including electric utilities? A. As I stated initially I am at the present vice-president of Day & Zimmermann, Incorporated who are engaged in work in connection with work concerning this question you have asked me about.

During my engagement with them, which has been for a period of nearly four years, my time has been principally occupied in connection with public utility investigations. These investigations have included rate litigation before the Illinois Commission in connection with the Public Service Company of Northern Illinois and the Western United Gas & Electric Company, those two properties aggregating about one hundred fifty million dollars in property.

I was also responsible for the preparation of the reproduction cost estimates of the Commonwealth Edison Company of Chicago, the reproduction cost of which property was about three hundred twenty million dollars.

Subsequent to that I was engaged before the Maryland Commission in testimony and litigation in connection with the rates of the Conowingo Power Company.

I have also been engaged before the New York Commission in connection with the rates of the Syracuse Lighting Company,

Theodore E. Seelye—For Respondent—Direct

which is a property operating in the central part of the State, a part of the Niagara Hudson Company.

Q. What prior to that? A. Prior to that I was vice-president of Gannett, Seelye & Fleming, Incorporated of Harrisburg, which company was engaged in engineering, and construction, and management of public utility companies as well as construction of other types. We operated properties in a number of states in the United States—I think some sixteen or eighteen. We operated properties in the Argentine, Brazil and Chile and for a short time in England.

Prior to that I was with the State of Pennsylvania, Division of Engineering of the Water Supply Commission, subsequently the Department of Forests and Waters, in charge of the investigation of dams in this State following the failure of the Austin Dam at the time the act was passed by the 1930 Legislature.

Prior to that I was in New York City as hydraulic designing engineer with the Electric Bond & Share Company.

Prior to that I was with the United States Engineer Department on the construction of locks, dams, wharves, and so forth; that is, the Engineering Department of the United States Army.

During the War I was in the service and subsequent to the War was in charge of the division for the purpose of appraising the War damages to the transportation service of Belgium, for the War damages before the Peace Commission.

I studied engineering at the University of Michigan and am a member of the American Society of Engineers.

Q. And now, approximately when was Day & Zimmermann employed to make an investigation of the properties of the respondent in this case? A. In the latter part of October, 1936.

Q. Can you state the character and the scope of the investigation which your firm has undertaken? A. We have for the purpose of the rate matter made a complete check and, where

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necessary, a re-inventory of the physical property of the Edison Electric Light & Power Company for the purpose of preparing reproduction cost estimates.

We are at the same time, at the present time engaged in making an original cost estimate of the property of this company based upon the inventory which was prepared of the presently owned property of the company.

Q. That is prepared by Day & Zimmermann previously to this time? A. Primarily it was prepared for this present time, sir. I went over it again to insure its accuracy.

Q. Wasn't this property appraised by Day & Zimmermann in 1934? A. Yes, sir; but we didn't go into as much detail as this.

Q. I mean that Day & Zimmermann did prepare an inventory? A. Yes, sir.

Q. There was an inventory prepared at that time? A. Yes, sir. We found our previous inventory helps a great deal, naturally, in getting this one done, because a lot of it was all ready for us.

We are engaged likewise in studying the company's facilities from an operating standpoint, particularly with reference to the generating station and we are making studies of the operating expenses, earning expenses of the company for the purpose of developing what, in our judgment, would represent a true statement of the earnings and expenses.

By Mr. Miles:

Q. So that generally speaking as I understand your summary you are investigating and attempting to establish the estimated original cost of the respondent's property, estimated reproduction cost new and depreciated of the respondent's property to properly portray its revenues and expenses and to present all relevant factors which seem to be necessary in connection with the determination of its rate base? A. Yes, sir.

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Q. Now, what member of your organization, Mr. Seelye, has been in direct charge of the investigation of the original cost of the respondent's property? A. This work, which is handled by our engineering department, is directly under Mr. Harry A. Reed as well as the work of completing the reproduction cost estimates and other engineering studies which are being made.

Q. So that Mr. Reed is directly responsible for the original cost work and for the completion of the reproduction cost study? A. Yes, sir.

Q. Now, what member of your organization is in charge of making the investigation? A. The investigating work is under the direction of Mr. David Katz.

Q. And he has been in charge of what I understand will be a separate investigation and study of the central generating plant and its use of the respondent? A. Mr. Reed has been generally responsible for these things but he has not been here for sometime—

Q. I will come to that, but he is the one who is in charge of that phase of it? A. That's right; yes.

Q. Now, will you state, Mr. Seelye, about how far Day & Zimmermann have progressed with their studies and conclusions and the reasons, if any, why this work has not been completed? A. We have completed the reproduction cost estimates to the extent of preparing the final exhibits. They are now in course of preparation. They will be finished in a few days—any time, in fact.

The original cost estimates involve the very difficult work of studying the company's accounting for the purpose of applying to the inventory the prices of all property which can be identified from the company's records or work orders. This covers, of course, a great deal of property and is a laborious process and cannot be handled by man power. In other words, we can't put fifty men on it and have it done fifty times as

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quickly than by one man. That work is progressing and is perhaps two or three weeks from completion—not over that.

A large part of the accounting work has been completed, but nothing yet has been set up in exhibit form because of the illness of Mr. Katz.

Q. And where is Mr. Reed now? A. Mr. Reed is home, sick.

Q. And has the investigation by your firm, including of course you and your associates, progressed sufficiently for you to have formed an opinion as to the reproduction cost new of the respondent's property? A. I just got a figure from Philadelphia last night. I have only, however, the figure for the electric property.

Mr. Miles: If your Honor please, I think in fairness to counsel on the other side, I should make this statement at this time:

The actual exhibit relating to the reproduction cost of respondent's property is not completed. I do not want to press or urge the Commission to let me interrogate Mr. Seelye in any way about that exhibit if counsel for the other side, possibly, or the Commission feels it should not be done. I simply wish to be perfectly frank and to get as far as I can under the obstacles that confront us.

The Commissioner: Do I understand that Mr. Seelye is prepared to testify to a round figure or to a figure that was given to him either by telephone or by letter or some other way just now from Philadelphia without any corroborating exhibits?

Mr. Miles: That's correct.

The Commissioner: The total figure has just been given to him without having available the corroborating exhibits and papers to present?

Mr. Miles: That is right, sir.

Theodore E. Seelye—For Respondent—Direct

Now, our situation is simply this, Mr. Commissioner, and I think this is the appropriate time to state it so your Honor can decide what is best for the orderly conduct of this hearing.

It is an unfortunate coincidence but nevertheless a true one that Mr. Reed and Mr. Katz, who are the two principal heads of this entire investigation, are ill. I don't know just how much incapacitated they may be, but I have in my possession, if your Honor wants to make it a part of the record, certificates from their attending physicians as to the nature of their illness, when they became ill, and when they may be able to return to work.

The Commissioner: Mr. Miles, I do not want to take that position, because I am entirely ready to accept your statement of the situation, as you know it better than we do, but we would like—

Mr. Miles: The reason I got these certificates was not because I did not think your Honor would be unfair about it, but we were genuinely embarrassed by both of these men having been taken ill at the same time, and we did not want any misapprehension about the facts.

The Commissioner: Then, as I understand it, the only matter that you would be ready to proceed with would be testimony as to the sum total figure?

Mr. Miles: Yes, sir; and one or two observations.

The Commissioner: And one or two observations concerning that and in relation to it. The exhibits are not here?

Mr. Miles: That is right, sir.

The Commissioner: And you have no other testimony available because of the circumstances you have described as to your inventory or appraisal or accounting or anything else?

Theodore E. Seelye—For Respondent—Direct

Mr. Miles: That is correct, sir.

The Commissioner: Now, I wish you would simply state for the record, Mr. Miles, the reasons as you know them why these two main witnesses in connection with the work on the ground are not here and when, according to their doctors—I do not want the doctors' certificates, but when, according to the doctors, they will be available for examination and also after that when you would be ready with the exhibits in connection with the various phases of this work.

Mr. Miles: Your Honor, from a personal investigation which I have made, and from my own personal knowledge, I can state that Mr. Reed was taken ill on January 15, 1937; that Mr. Reed is what might be termed the principal factor in the preparation of this case, having been charged with preparing the exhibits of original cost and the reproduction cost estimate which the company desires to file and, in conjunction with Mr. Ink, a study and report with respect to the central generating plant. I am informed, personally, by the attending physician of Mr. Reed that he will be unable to resume his work for at least a week.

I am further personally informed and have knowledge of the fact that Mr. Katz, who is one of the principal auditors of Day & Zimmermann and has been in entire charge of the accounting investigation of the case was taken ill on Friday afternoon of last week and is now confined to his home and will be there, according to a report which I have received from his office, until on or about February 4th. That is the doctor's statement.

Now those two men are absolutely indispensable to this company in the orderly and proper presentation of its case, and they are the facts that I have learned of my own knowledge with respect to them.

Theodore E. Seelye—For Respondent—Direct

The Commissioner: Let me ask you this question: As I understand it from your statement both of these gentlemen with reasonably good luck will be available within a week or ten days?

Mr. Miles: Yes, sir; to complete their work.

The Commissioner: To complete their work?

Mr. Miles: Yes, sir.

The Commissioner: And the exhibits necessary for their testimony, is the situation such that the work in that connection can be continued in their absence or will it have to wait until they return to their work?

Mr. Miles: The situation is, a part of it is being continued and has never stopped and a part of it will have to await their return.

The Commissioner: After their return, how soon after that will you be able to have the men here with the exhibits?

Mr. Miles: Your Honor, before I answer that question may I check my own impressions with Mr. Seelye's?

The Commissioner: Yes.

Mr. Miles: Your Honor, I asked Mr. Seelye and he confirms what was my own opinion, that we could go forward with this case probably two weeks from today and be ready to make progress.

By the Commissioner:

Q. Do I understand by that you will be ready in two weeks from today to go ahead and present testimony for three days in that week?

Mr. Miles: Yes, sir.

Mr. Miller: Mr. Commissioner, that would be the 10th of February and the 12th, of course, is Lincoln's Birthday.

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The Commissioner: The 12th is on a Friday.

Mr. Miller: Yes; on a Friday so that we would have only two days if we started on the 10th. I was going to suggest that we start on the 17th.

Mr. Miles: Mr. Commissioner, as far as I can now judge, I think we can continue as rapidly—

The Commissioner: You think, with certainty—subject of course to any further illness—that you could go ahead for two or three days on the 17th?

Mr. Miles: I have no doubt that is a fair statement, Mr. Commissioner.

The Commissioner: I think I ought to say first of all—I do not want what I am about to say to indicate the slightest doubt of what you have said, Mr. Miles, I believe it implicitly—but there is a peculiar combination of circumstances in this case.

I asked counsel at the last hearing, which was in December—December 9th, I believe—when it was apparent that the company was not ready to go ahead at that time, when the company would be ready with its case and I was told on January 15th, and that is stated on the record. The case was then set for the 20th, giving you practically a week. A postponement was then asked and properly so because it had happened that we had overlooked for the moment, in setting down the 20th, that it was Inauguration Day in Washington. It was then set for the 27th, and then a postponement was asked for reasons we will not go into now—changes in counsel and all that, and because of counsel's previous engagements, which of course was true as to the previous engagements, but I thought that we should go ahead because I did not want anybody to get the impression that the Commission was being dilatory in this matter. Now, while I recognize fully the physical circumstances that

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control in the matter, being something that no human being anticipates, I am entirely agreeable to have a continuation until then but only on account of the circumstances, which cannot be overcome by either side, and for that reason, instead of having Mr. Seelye testify to a round figure, we will delay the testimony until the other witnesses are ready. Do you object to that?

Mr. Miller: I have no objection to Mr. Seelye testifying to a figure if he has it. In other words, if Mr. Seelye is going to state a figure that would be inconsistent with a later figure, I don't think there's much use of placing that figure on the record. However, if Mr. Seelye is willing to state a figure from the inventory of the Edison Light & Power Company, as produced, and he merely proposes to state that figure and to support it, I see no reason why he should not state the figure at this time.

The Commissioner: Mr. Miller, Mr. Seelye is not prepared to offer any exhibits at this time. I think in fairness to Mr. Seelye, in view of the interruptions in the groundwork on which this figure is going to be based, the sickness of the principal agents of Day & Zimmermann who are constructing these projects, I think it would be fair all around to have the matter stop here. It will be of no use to the Commission to have that figure unless testimony is produced as to how it is arrived at at the same time. A figure means absolutely nothing as far as we are concerned, because we can't check it or do anything about it.

(Discussion off the record.)

Mr. Miller: We would not be able to cross-examine today, Mr. Commissioner.

The Commissioner: Of course you would not, there

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being nothing available to cross-examine on. I think under all the circumstances this hearing had better be continued at this point. I do want to say, however, that the Commission has the duty to press this matter with the greatest expedition possible in view of the delays that have already occurred, for which I am not blaming anyone. I do hope that when we start again, on the 17th of February, the company will be in a position to proceed and finish insofar as the number of hours allotted for hearing will allow the presentation of its case in chief.

Mr. Miles: I can only say, your Honor, that we will use every human effort to accomplish that purpose.

The Commissioner: Unless sickness should occur or something not foreseen, I shall expect the company to proceed. In other words, normal circumstances will not be allowed to stand in the way and I take it that you will be ready to proceed on that basis.

Mr. Miles: Yes, sir.

(Next hearings scheduled for February 17, 18 and 19, 1937, starting at 9:30 o'clock a.m.)

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Wednesday, February 17, 1937.

Further hearing was held in above matter before the Public Service Commission, Commissioner Stahlnecker presiding, at the office of the Commission, Harrisburg, Pa., on above date, beginning at 9:30 a.m.

. PRESENT:

S. G. MILLER, Esq. (Harrisburg, Pa.), for complainant;
V. K. KEESEY (York, Pa.);

CLARENCE W. MILES, Esq. (Baltimore, Maryland);

DAVID I. McCAHILL, Esq. (Pittsburgh, Pa.), for respondent.

EVIDENCE IN BEHALF OF RESPONDENT.

Mr. Miles: It seems to the respondent proper, with the Commission's permission, that we make a statement at this time of the approach which we propose to take in this case and the scope and nature of the evidence that we will offer.

It seems to us obvious that in expressing the conception of the respondent to these proceedings, any such conception must be first predicated and conditioned upon the public obligations of the Company. For this reason, I would like to call to your Honor's attention at the outset very briefly the conditions under which the Edison Light and Power Company is now operating, and its inter corporate relations. Your Honor will recall that the respondent is engaged in the electric business in the City of York; that all of its capital stock is owned by the York Railways Company, which Company renders a transportation service to the people of York; that railways company also owns the stock of the York Bus Company, a collateral, so to speak, transportation company, serving the same community. The railways company finally owns the stock

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of the York Steam Heating Company. Therefore we have a picture where there are four affiliates, each holding a certificate of public welfare and convenience, which indicates that they are rendering an essential public service to the people of York and environs.

Those four companies, if your Honor please, are commonly officered; they are commonly controlled and managed; the principal executive officers of each one are substantially the principal officers of the others, and the Boards of Directors are largely interlocking.

The stock of the respondent, owned by the Railways Company, along with the stock of the Steam Heating Company and certain other obligations of the subsidiaries of the Railways Company, have been pledged by the Railways Company under a certain trust indenture or mortgage constituting part security for some six million dollars of bonds that are now outstanding by the York Railways Company, and which mature on or about December 2nd of this year. So that they are in every sense of the word tied together; their interests are common. The success of one very materially affects, not only the financial success of the other, but the ability of the other to continue the rendition of its particular public service. Each of those four companies, we think, your Honor, we can very readily establish is of definite benefit to the others, as well as rendering a necessary public service. We think we can establish to the Commission's satisfaction and have exhibits to that effect, that the electric company sells steam to the steam heating company at a compensatory rate, that it sells energy to the railways company at a compensatory rate; that the mere fact that these companies are manned, so to speak, by the same individuals, enables each of them to operate at a sum substantially less than they could operate if each one was divested from the other and compelled to maintain its

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own separate staff. There are various other facts in this connection, by virtue of the relation of one company to the other, which will come out in the evidence.

Our conception of this case, if your Honor please, is that the public policy, the sound public policy, justifies the continuance of the services rendered by those four affiliated companies. We say that is a sound public policy because not only are those services essential to the people of York but also because of the fact that each of those companies contributes a benefit to the other and tends to permit the other to operate at less expense and hence more profitably than would be the case if there was some definite line of demarcation between the four companies. Hence we propose to argue in these proceedings as earnestly as we can, we think there is ample legal authority for the proposition that under the peculiar facts that exist in this case that this respondent is entitled to a rate of return that will not impose any burden upon the electric consumers of the Company, but will, on the other hand, tend to permit these four companies to continue to render their respective services to the benefit of each other, and what is more important, to the benefit of the public that they now serve. If I may make myself perfectly clear, it is of course not suggested by the respondent that the rate base of respondent should include anything other than property used and useful by it in the rendition of that electric service. But we do submit, when the time comes to apply a rate of return to that rate base, consideration should be given to these factors which I have mentioned, and what is equally important, and which I emphasize with all the vigor I can command, consideration should be given in fixing a rate of return to what may happen to these other services if the Commission were to confine itself to the opinion it has expressed in a resolution granted sometime ago with respect to a six per cent. rate.

The Commissioner: I do not want to interrupt your state-

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ment, but assuming that six per cent. was a proper allowable return for an electric company solely operating an electric property and not being tied up with other affiliated companies such as these, if that were a correct return for that company, is it your position here that because of the peculiar circumstances surrounding this case, because of the tie-up between the companies and the services which they are rendering, which are all intermingled, you feel in this particular situation that the Commission should allow the Edison Light and Power Company to earn a larger return than the return which would be allowed for a Company operating solely an electric property?

Mr. Miles: That is a perfectly fair position to state but with only one qualification, further assuming that the rates which the respondent proposes and has in the past proposed, and which we desire to go into at the proper time, assuming that the rates of the respondent are rates which are reasonable by comparison with other rates, and which do not constitute any burden upon the electric consumers in that particular community. We expect to show you that the rates of this respondent, which it is proposing to this Commission, still constitute the lowest rates in Eastern Pennsylvania.

The Commissioner: Speaking for myself, I do not think that the rates of any Company, whether they are the highest or lowest in Pennsylvania, are the factors that we must finally consider. The factor that we must consider, even if they are low, is whether the Company is earning an improperly high amount of revenue, based on its return. If they are too high, if they are earning more than a proper return, they should be still lower.

Mr. Miles: We think that such a comparison is entirely relevant only for the purpose of testing the question as to whether the electric consumer is being subjected to any undue burden, in connection with the fixing of the rate of return for the electric company, tied in with these other three affiliates.

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The only reason I have taken up this time is because I think it might be helpful when we present our witnesses, and your Honor might have in mind the objective, frankly speaking, which we are seeking in this case.

The Commissioner: In order to get the matter entirely clear in my mind, you do not propose to contend that the property of the affiliates, of the interlocking companies with the Edison Light and Power Company should be included in the rate base?

Mr. Miles: Not at all.

The Commissioner: Your position is that the property included in the rate base should be only the property that is used and useful and owned by the Edison Light and Power Company, but that because of the circumstances which you have outlined in regard to the relationships of each company, one to the other, and in regard to the services rendered by the companies, that the Commission should give consideration to a larger rate of return for that Company than if those peculiar circumstances did not surround this Company.

Mr. Miles: Yes, sir. We have had the benefit of the services of the firm of Day & Zimmerman and have had appraisals made of the reproduction cost of this Company's properties, the original cost; we have had analyses made of the revenue and expenses of the Company; we have had considerable separate study made of the generating facilities and the part that they play in the rendition of the service and the business of the electric company, and the incidental parts that these facilities play in the business of the steam heating company.

In the presentation of the case your Honor will recall that at the last hearing Mr. Seelye explained that different members of the organization of Day & Zimmerman had been responsible for different parts of their investigation of this case. So, in connection with the reproduction of cost estimate, which is the second exhibit which we propose to offer, there

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will be four or five witnesses called. The same policy, the same program, will be followed in connection with the presentation of evidence relating to original costs. The same group of men are responsible for both studies. Mr. Katz of the organization will supply certain testimony with respect to the accounting phases; Mr. John Ink will supply certain testimony with respect to the generating facilities, and there will be testimony with respect to the plan of the York Railways Company for the continuance of the road. In other words, we feel charged upon as a part of our conception of this case, to set forth plainly what the Company has in mind with respect to the continuance of that railway and its plan of refunding six million dollars of bonds which I have mentioned, maturing the latter part of this year. Obviously, if the Commission is to give any consideration to the affiliations between these companies and the continuance of their respective services, it necessarily becomes their duty to disclose to the Commission the plan we have in mind whereby those services could be continued, if the Commission saw fit to agree with our conception of the case. That is, substantially speaking, the method of approach of the respondent to its obligations in this hearing.

Mr. Miller: I have no objection to Mr. Miles outlining the manner in which he proposes to present his testimony from his point of view, but I do object very strongly to any testimony as to the interlocking relationships of these companies. It seems to me what we are trying here is an electric rate case, and the basic data to be presented in an electric rate case to determine the proper rate for an electric company, are data relating to the property of that Company and the operating expenses of that Company and the revenue derived by that Company from its consumers.

The Commissioner: We can meet these respective questions when we come to them. What we want first in this matter

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is information as to your estimate of value of the electric property.

Mr. Miles: I might say that by far the greatest part of the time and energy which we will consume will relate to the Edison Company and we will only inject into the record such other data as we think the Commission should have.

The Commissioner: Let us have the electric company data first.

Mr. Miller: Would you mind stating the rate of return that you think should be applied?

Mr. Miles: Our opinion is that the rate base of the Edison Company is between five and six million dollars, and that the rate of return should be not less than seven and one-half per cent.

HARRY A. REED having been duly sworn was examined and testified as follows:

Direct Examination.

By Mr. Miles:

Q. Mr. Reed, would you please state your full name and occupation? A. Harry A. Reed, engineer employed by Day & Zimmerman, Inc. of Philadelphia.

Q. Will you state what has been your experience in connection with the making of reports and appraisals for various corporations, as well as your experience in engineering and construction matters? A. From 1934 to date I have been employed as an engineer of reports and appraisals for Day & Zimmerman, Inc., specifically relating to the following companies: Philadelphia Electric Company, Commonwealth Edison Company of Chicago, Syracuse Lighting Company of Syracuse, New York, Power Corporation of New York, Mid-

Harry A. Reed—For Respondent—Direct

land United Company, Midland Utilities Company, Pacific Gas and Electric Company, and at present the Edison Light and Power Company of York, Pennsylvania. With these foregoing companies I have been engaged either as an assistant or in principal charge of the engineering features involved in the rates that were being made. Prior to 1934 I was vice-president and general manager of the William McClelland Company, Lim. of Montreal, Canada, an engineering construction company. For the period from 1920 to 1930 I was manager of the South America office of Stone & Webster Engineering Corporation in Buenos Aires, Argentina Republic. During that period I had charge of negotiating contracts for engineering and construction work, as applied to the construction of office buildings, industrial plants and steam railroads. For the period from 1918 to 1920 I was assistant to the vice-president of Stone & Webster Engineering Corporation in New York, responsible for new business and solicitation, reports on new projects and the negotiating of contracts for construction work. In 1917 and 1918 I was assistant to the vice-president of Stone & Webster, in charge of construction, assigned to the construction of the ordinance bus depot for the American Expeditionary Forces in France, as a part of my Company's obligations on that work. We were also employed in a consulting and supervisory capacity for the technical advisory Board of the American Expeditionary forces on all power requirements. It was my own responsibility to investigate the sources of power, report on the necessity for the expansion of existing plants, organizing the work necessary for the purchase of all equipment and placing it in operation to meet the requirements of the Army.

Mr. Miller: Mr. Commissioner, we are prepared to admit Mr. Reed's qualifications.

Harry A. Reed—For Respondent—Direct.

By Mr. Miles:

Q. Just one more observation, and we will finish his resume of experience— A. For the period of 1912 to 1917 I was resident engineer and superintendent of construction, employed by the Stone & Webster Engineering Corporation, either as assistant or in charge of the construction of numerous steam electric generating stations, sub-stations, industrial plants and electric railways.

Q. Have you previously had occasion from time to time to testify in rate proceedings before State Regulatory bodies? A. I have so testified on two occasions, the first instance being the Illinois Commerce Commission in a rate proceeding involving the Commonwealth Edison Company of Chicago. I also testified before the Public Service Commission of the State of New York in a rate case proceeding against the Syracuse Lighting Company, which case is still continuing.

Q. As part of your work as a member of the staff of Day & Zimmerman in this case, have you had occasion to prepare a charge portraying the capitalization and corporate history of various companies, whose properties or securities have been acquired by the respondent or its affiliates? A. Yes, sir.

Q. I hand you herewith a photostatic chart entitled "Capitalization Chart of York Railways Company, subsidiary and predecessor companies" and ask you whether that is the chart to which you have just referred? A. It is.

Mr. Miles: I ask that this chart be marked as respondent's exhibit No. 1.

(Chart in question so marked by the stenographer.)

By Mr. Miles:

Q. Mr. Reed, will you explain to the Commission the general plan or thought that has been followed in connection with the preparation of this chart? A. We have attempted in this chart to show the various companies that are predecessor com-

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panies to the present operating companies, and by line indication to show the way in which mergers and consolidations, as well as the purchase of properties, have taken place. You will note under the word "Legend" at the top that the solid line indicates the acquisition of plant and property through purchase and/or merger.

Q. The solid white line? A. Yes, sir; the dotted white line indicates the acquisition of stocks, bonds and other obligations through purchase and/or merger. The yellow lines indicate the connections between the York Railways Company and the three affiliate companies, the Edison Light and Power Company being No. 2, the York Steam Heating Company and the York Bus Company, all of which are presently operating companies.

By the Commissioner:

Q. Why do you call the Edison Light and Power Company No. 2? A. The Edison Light and Power Company is indicated as No. 2 to distinguish it from the Edison Light and Power Company which resulted from a merger which took place in 1913. There were two mergers, one in 1913 and the other in 1916, in which the name of the company was not changed, but in order to clarify the merger proceedings we have indicated No. 1 and No. 2 for clarification purposes only.

By Mr. Miles:

Q. As I understand your statement, the present Edison Light and Power Company, the respondent in this case, the York Railways Company, the York Bus Company and the York Steam Heating Company are indicated within the confines of these yellow blocks? A. Yes, sir.

Q. The solid white line shows the manner in which the respondent acquired the properties and plants of its predecessors through either purchase or merger? A. That is correct.

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Q. The dotted white line indicates how the respondent acquired its predecessor companies through purchase of stocks, bonds or other outstanding obligations? A. Yes, sir.

Q. And the solid yellow line shows the tie-in between the respondent, the York Steam Heating Company, the York Bus Company and the York Railways Company? A. Yes, sir.

Q. Will you explain why, because it may seem confusing without such explanation, why a dotted white line appears as the connecting link between the York Bus Company and York Railways Company? A. Perhaps we should have used both lines. I think that is an oversight in the hasty preparation of the exhibit. The dotted line should indicate the ownership of the stock of the York Bus Company, and to carry out the concept of the chart there also should be a solid white line.

Q. Will you state the source from which you have drawn the information which is disclosed on this chart and to which you will refer in your testimony with respect to this exhibit? A. This information was obtained from the minute books of the various companies indicated on this chart, and as a result of consultation with officers of the Company, who have been in the employ of the Edison Company or the York Railways Company for a good many years, and who are familiar with some of the details which were not particularly clear when I referred to the minute books. We have also used copies of agreements, proposals and other relevant data that we could find in the Company's files to aid us in putting this information in the proper form.

Q. But in substance the information upon which you have drawn is all disclosed among the records, the accumulated records and minute books of the various companies? A. Yes, sir, that is correct.

Q. Will you refer to the various companies mentioned on the chart, whose properties or securities were acquired by the respondent, and explain briefly to the Commission in what form

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the predecessor companies of the respondent were acquired by it, that is to say, the group of companies appearing in what might be described as the lower right hand corner of this chart, or those immediately beneath—A. I will start that explanation by referring to the Edison Electric Light Company of York, Pennsylvania. The Edison Electric Light Company of York, Pennsylvania was the first of the electric companies to be started in the City of York. It was organized originally in 1885, and after certain changes received its present letters patent on August 13, 1889. The actual start of the Company was in 1885, when capital was raised and the construction of a steam electric power station was initiated at the site of the present steam generating station of the Pershing Company.

Q. That was the real beginning, so to speak, of the rendition of any electric service in York? A. That is correct, that is to say, that during the time of the construction of its station, when it was under way, the Company did have quarters installed in rented property that was of a temporary nature only, and the real start in our situation was with the construction of the forerunner of what is now the main central generating plant.

Q. That is the construction which you started in 1885? A. Yes, sir; the start of this Company inspired others to start in this field, and shortly thereafter the Peoples Light and Power Company of York, Pennsylvania was organized under the laws of West Virginia. It later gave up its Virginia charter and was granted letters patent in Pennsylvania in 1886. This Company was organized primarily for the purpose of engaging in street lighting and a plant was constructed adjacent to the site of the present Edison Generating station. When the City of York was incorporated in 1887 Council asked for bids for street lighting, and both the Edison Lighting Company and the Peoples Electric Light Company submitted bids. The Edison Company was successful in this negotiation and expanded their

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plant as a result of that new contract. The Peoples Company, as a result of losing out in the competition, made arrangements to sell all of their plant and property to the Edison Lighting Company of York.

Q. You mean to the Edison Electric Light Company of York? A. To the Edison Electric Light Company of York, yes, sir.

Q. That sale was consummated? A. Yes, sir, on February 8, 1894. In the meantime another group of citizens had become interested in the Westinghouse system of generation and they organized what was known as the Westinghouse Electric Light Heat and Power Company, which received its letters patent in October 1892. This Company built a plant for supplying alternating current, the Edison Company confining its service to direct current at that time. Carrying on in chronological order, in May, 1899, the York Light Heat and Power Company was incorporated under the laws of New Jersey with a capital stock of 35,000 shares of a par value of \$10 each. After its first meeting a gentleman who claimed to own eighteen thousand one hundred and sixty-nine shares of stock of the Edison Electric Light Company of York and two thousand five hundred and sixty-five shares of the capital stock of the Westinghouse Light Heat and Power Company of York, offered to exchange his holdings for the common stock of the York Light Heat and Power Company. The directors of the Company approved this offer and we thus have the first instance of a control of competing electric companies coming under a single management in this territory.

Q. I do not want to prevent you from commenting on anything that is helpful but we want to get along as quickly as possible, so, won't you go into the other companies that eventually formed a part and became a constituent part of the present respondent? A. There is one other electric company in this general territory known as the Red Lion Electric Light

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Company, which was granted letters patent in 1890. This was a small property, and in 1905 this Company, together with three so-called franchise companies, were merged and consolidated to form the York and Windsor Electric Light Company. The York and Windsor Electric Light Company, together with the Edison Electric Light Company of York and fourteen franchise companies, were merged and consolidated under an agreement dated May 8, 1913, into what is now known or was at that time known as the Edison Light and Power Company, which we refer to as No. 1. In 1901 the Merchants Electric Light, Heat and Power Company was granted letters patent to engage in furnishing electric power and electric service in general in the City of York. This Company built a plant, and while it was engaged in service in York it was hardly competition because they in fact served separate territories from those in which the old Edison Electric Light Company was located. In 1915 a merger took place, in which the plant and the property of the Edison Light and Power Company, No. 1, the Merchants Electric Light, Heat and Power Company, and a group of franchise companies, indicated on the chart, were all merged and consolidated to form the present Edison Light and Power Company, which we refer to as No. 2.

Q. The date of the consolidation, whereby a number of constituent companies became the respondent in this case, was June 26, 1915? A. Yes, sir; subsequent to that time the Edison Light and Power Company, No. 2, acquired the plant and the property of a number of franchise companies, as shown in the block on the sheet. I think there are seven franchise companies. They came in after the merger of 1915—

By the Commissioner:

Q. That is the block furthest to the left? A. Yes, sir, under the Wrightsville block.

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By Mr. Miles:

Q. There is one question I want to ask you, about one of the earlier companies, that is the Red Lion Electric Light Company. During the course of your investigation did you obtain any information as to the price of the plant and the property of that Company at or about the time of its merger with the York and Windsor Electric Light Company on March 15, 1905? A. There was a steam generating station in Red Lion and a distribution system in the immediate territory. That constituted the plant and the property of the Red Lion Electric Company, as disclosed by the minutes.

Q. The Company owned, as I understand you, among other things, a generating plant? A. Yes, sir.

Q. Do you have any information as to the character and capacity of that plant? A. I do not think I have any exact information—

Q. All right. Mr. Reed, having covered briefly the history of the acquisition by the respondent of its predecessor companies, will you now be good enough to state what your investigation disclosed with respect to the circumstances surrounding the organization and the beginning of business by the York Steam Heating Company in 1898?

Mr. Miller: Mr. Commissioner, I see no reason for going into the history of the York Steam Heating Company. The respondent company and its predecessor companies would seem to be the only ones involved in this proceeding, and I object to the testimony of the York Steam Heating Company as being irrelevant.

Mr. Miles: The purpose of the question is two-fold, the first, as we have previously stated, we think the Commissioner should consider these companies together in the consideration of the rate of return to be allowed, but more important at this particular time, as relates

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to the York Steam Heating Company, and the real purpose of the question is to refute testimony offered by the Commission as to the use of the central generating plant, the fact that it is not properly a part of the rate base of the respondent company. We want to be able to show in connection with our whole presentation the question of the use of the generating facilities, and we want now to be able to show the known purposes that caused the construction of the generating facilities, the use to which it was put, from its beginning, to be followed up later on by testimony as to its present use to the respondent.

The Commissioner: In the testimony presented by the Commission there was considerable testimony with relation to the York Steam Heating Company.

Mr. Miller: Yes, sir, but nothing as to its corporate history.

The Commissioner: You have no objection to an analysis as to the merger and consolidation which brought about the present electric company?

Mr. Miller: No, sir.

The Witness: The York Steam Heating Company obtained its letters patent in April of 1898. It was organized by a group who were mostly directors of the Edison Electric Light Company of York, Pennsylvania. According to the minute books the president of the American District Steam Heating Company had tried to interest the directors in the opportunities offered to engage in the steamheating business for commercial and residential customers. As a result of a study that had been made by that Company, the District Steam Heating Company, it was presented to the Board of the Edison Electric Light Company that they could obtain a very promising return on any investment that would be

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required to build a steam distribution system in the central part of the City of New York, the steam which this business would require being exhaust steam from the engines in the central plant, which up to that time had not been utilized. As far as I can find from both the minutes and by talks with various officers from the Company, the early installations in the central generating plant did not have condensers, and therefore the Company in its generation of electricity was not utilizing to its full economic advantage the steam which passed through the engines.

By the Commissioner:

Q. What Company are you talking about? A. I am referring now to the Edison Electric Light Company, whose directors were responsible for forming the York Steam Heating Company.

Mr. Miles: He said that a group of directors who controlled the York Electric Light Company were responsible for the organization of the York Steam Heat Company.

The Witness: The York Steam Heating Company was organized with a capital of one hundred shares of common stock, of ten dollars par value, all paid in. The first construction that was engaged in for the distribution of steam lines was the result of a contract between the Edison Electric Light Company of York and the American District Steam Heating Company. In other words, the Edison Company put up the money for the construction of the distribution mains, under which the York Steam Heating Company rendered steam heat service to the central section of the City of York.

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By Mr. Miles:

Q. May I inquire at this time for the purpose of clarifying the record, as I understand it, the York Steam Heating Company was sponsored and organized by a group who comprised the Board of the then Edison Electric Light Company of York, Pennsylvania? A. Yes, sir.

Q. That group organized the York Steam Heating Company for the purpose of utilizing the steam? A. Yes, sir.

Q. Incident to the operation of the generating facilities forming a part of the property of the then Edison Electric Light Company? A. Yes, sir.

Q. Which was waste heat in the steam exhaust? A. Yes, sir, up to that time.

By the Commissioner:

Q. Who furnished the capital for the York Steam Heat Company? A. The capital was subscribed by the directors.

Q. Not by the Edison Company? A. The capital of one thousand dollars was subscribed by the directors as individuals.

Q. And not as official representatives of the Edison Company? A. No, sir.

Q. And not with Edison Company money? A. As far as the capital stock was concerned, it was subscribed as individuals.

Q. Who put up the money for the construction of the plant? A. The plant which really was comprised of underground lines was all paid for by the Edison Electric Light Company of York. That situation continued from 1898 to 1921.

By Mr. Miles:

Q. Where did the earnings from the York Steam Heat Company go after its organization, if any? A. The earnings went to the Edison Electric Light Company.

Q. It was the concern which benefited from the organiza-

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tion of the Company,—the Edison Electric Light Company?

A. Yes, sir.

By the Commissioner:

Q. Did they earn any money? A. There was a number of instances where the Board declared a dividend.

Q. I asked you whether they earned any money? A. Some years I believe they did. I personally did not make a careful analysis of the yearly operating costs as I was interested primarily in the corporate development.

By Mr. Miles:

Q. Did your investigation indicate the exact date when the construction or installation of the central generating plant now owned by the respondent was actually commenced? A. The exact date?

Q. I mean the year? A. It started in the latter part of 1885, which was some twelve years prior to the organization of this York Steam Heating Company.

Q. And the construction of those facilities was commenced by the Edison Electric Light Company of York, one of the predecessors of the present respondent? A. That is correct.

Q. While we happen to be on the subject of the generating plant and its history as relates to these various companies, will you be good enough to tell us what you know with respect to the dates of installation of the various boilers and other units of property comprising the generating plant? A. At the end of 1886, according to the Company records, the plant equipment comprised four boilers, two thirty kilowatt Edison By-Polar one hundred ten volt generators. They were belt connected to steam engines. Shortly after 1886, a larger unit comprising two 60 K.w. Edison generators belt connected, were installed. Minor changes in equipment, with replacement of some of the older boilers with larger sizes took place. Up to the period of 1898 the Edison Lighting Company's equipment

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comprised boilers, engines without condensers, direct connected to electric generators, solely designed for the purpose of the production of electric energy.

Q. All of this information that you are now testifying to, as I understand it, are matters disclosed among the corporate records of these various companies, supplemented by some information which you have obtained from the employees or officers of the Company, who have been familiar with the matter, since the dates we are talking about? A. That is correct.

Q. In 1921, which is the last date to which you referred to in the installation or construction of the central generating plant, what was done by the York Steam Heating Company or the Edison Company with respect to the right to engage in the steam heating business? A. In 1921, under an agreement between the Edison Light and Power Company, the Department of State in Harrisburg, and the Public Service Commission, the books of the York Steam Heating Company were open to show the capital assets of the steam heating company. The directors of the Edison Light and Power Company realized that they had a very large investment in the distribution system for furnishing steam heat. They had an appraisal made in 1913, which indicated approximately one hundred and ten thousand dollars as the reproduction cost of the system as then existing. Subsequent extensions from 1913 up to 1921 had been made in the distribution system, all paid for by money advanced by the Edison Light and Power Company.

By the Commissioner:

Q. What distribution system, the electric distribution system? A. The steam distribution system. As a result of an agreement between the Public Service Commission and the Edison Company—

Q. An agreement to do what? A. An agreement to place on record in the books of the steam heating company the investment in the distribution lines furnishing steam heat, which up

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to that time had been carried solely on the Edison Light and Power Company's books.

Q. What do you mean by an agreement between the Public Service Commission and the Edison Company? A. As I understand the situation from reading the minutes, the York Steam Heating Company which was granted a franchise to operate a certain steam heat company in York had no evidence of that on its books, as all the money for the building of those lines had been advanced by Edison or its predecessor, the Edison Electric Light Company of York, and was carried on the Edison books. In 1921 the Edison Light and Power Company, realizing the extent of the investment they had in steam heat lines, requested permission to open the books or to enter on the books of the steam heat company recognition of the investment that they had made in steam heat property. That was done. The Edison Light and Power Company received a note of the steam heating company obligating itself to pay or to repay Edison for the investment that Edison had made in these lines, to the amount that was entered on the books, of approximately \$68,000, as of the year 1913.

Q. There was no agreement, they requested permission from the Commission to make certain entries on their books from an accounting viewpoint? A. Yes, sir.

Q. According to your statement the Public Service Commission approved that method of entering those items? A. That is correct.

Mr. Miles: I do not believe that the witness intended to imply that there was an agreement. The Edison Company and its predecessor had advanced money for the construction of this distribution system, and they reflected it on the Edison books. There was nothing on the books of the York Steam Heating Company and they applied to the Commission for permission to enter those

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expenditures on their own books to properly reflect the plant and property account.

The Witness: That is correct.

By Mr. Miles:

Q. The remaining companies other than the York Bus Company, indicated on this chart, that is to say, those at the left hand column constituting the ones with respect to which you have not commented as yet, are simply companies whose properties or securities were ultimately acquired by the York Railway Company? A. Yes, sir, that is correct.

Q. This group of companies are the predecessors in interest from time to time of the York Railway Company, in connection with the rendition of its transportation service? A. Yes, sir.

Q. The Company indicated in the yellow block in the upper left hand corner of the chart represents the York Bus Company? A. That is correct.

Q. That is wholly owned by the York Railways Company? A. Yes, sir.

Q. Substantially all these predecessor companies of the York Railways Company went into the latter by virtue of mergers or consolidations, did they not? A. Yes, sir. There was some of them that went in after the date of the merger and consolidation which formed the York Railways Company.

Q. Just for the purpose of the record, it is a fact, is it not, that the York Railways Company rendered a transportation service in the same community that is served by the respondent in this case? A. It operates an electric street railway.

Q. It operates an electric street railway in the City of York and the suburban service in some of the surrounding territory?

A. The transportation service is supplemented by the Motor Coach, or the Motor Carrier service of the York Bus Company.

Q. In the same community, generally speaking? A. Yes, sir.

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Mr. Miles: At this time we would like to offer in evidence Respondent's Exhibit No. 1, which has been already identified by the witness and marked by the stenographer.

Mr. Miller: I have no objection.

The Commissioner: It will be admitted for the record.

Mr. Miles: That is the end of the direct examination of Mr. Reed on this subject. We might call him back once or twice on other matters.

Mr. Miller: Mr. Commissioner, we would like to defer cross-examination until we have an opportunity to study the exhibit.

The Commissioner: Very well.

THEODORE E. SEELYE, being recalled, testified as follows:

Direct Examination.

By Mr. Miles:

Q. Mr. Seelye, at the conclusion of the prior hearing I believe you were on the stand and had testified as to your connection with Day & Zimmerman and as to the nature and scope of an investigation being made by Day & Zimmerman of the property, business and affairs of the Edison Company and its affiliates? A: Yes, sir.

Q. You have likewise testified that as a part of your investigation your firm had made an estimate of the reproduction cost, new, reproduction cost new less accrued depreciation, of the properties of the respondent and its affiliates? A: Yes, sir.

Q. I hand you herewith a volume entitled "Report No. 3234" in the cover of Day & Zimmerman, Inc., and ask you whether that is the estimate of reproduction cost new and de-

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preciated of the properties of the respondent and its affiliates, to which you referred? A. Yes, sir.

Mr. Miles: The volume, your Honor, contains an estimate of reproduction cost on the property of the Edison Light and Power Company, which is the first part and the major part of the exhibit, and the second part of the exhibit covers a similar report in less volume and in less detail, with respect to the property of the York Railways Company and the York Steam Heating Company, and about a half a page relating to the reproduction cost of the property of the York Bus Company. I ask that this be marked for identification as Respondent's Exhibit No. 2.

(Exhibit in question so marked.)

By Mr. Miles:

Q. Mr. Seelye, will you explain the general character and scope of this report? A. This report sets forth the reproduction cost estimate of the physical properties, of all of the physical assets of the respondent company and of its affiliates. It includes some property which is not used and useful in the Public Service and we have a separate exhibit for the purpose of eliminating these non-useful properties. These represent all of the assets, the physical assets, of these companies. The report was prepared by taking a physical inventory by count of the units of property and by applying to these units of property prices for labor, construction and materials, to arrive at the total results, as shown on the summaries.

Q. That method of making the inventory was followed with respect to each of the four companies, whose properties are referred to in the volume? A. Yes, sir.

Q. Now, will you state in a general way the method by which the unit costs were gathered? I recognize that your assistants did specific parts of this report but I merely want

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some general testimony from you as to the method followed by Day & Zimmerman in making this report? A. The preparation of this report, in fact the preparation of the reproduction cost estimate, as we conceive it, is really divided into two parts, of the physical cost of the plant, the direct costs which represents costs which would be experienced by a contractor in carrying out the work, and the overhead costs which are specifically what might be incurred by the owners on the property. That division of them is clearly indicated by the uniform classification of accounts and it is based on everyday experience. We prefer to set them up as carefully as we can, with that line of demarcation, because we think it represents a logical way to an intelligent understanding of the development of the construction cost estimate, which the direct costs actually do represent, in our opinion. The method which we follow in pricing the units of property is not unusual to the extent that we obtain the prices of the various materials and equipment, estimate the costs of installation and the labor required to set them into place.

Q. Were there a number of the members of your staff who assisted in the making of this reproduction cost estimate? A. Yes, sir. We have for some time followed in companies that were sufficiently large to justify it,—put in charge of the various groupings of accounts by nature of the work, men who are particularly experienced in that special line, for example, on building construction we use an engineer who is experienced in the construction of buildings. On transmission or distribution lines we use an engineer whose experience has been in the designing or construction of transmission lines and distribution systems, and so on for the generating systems and for the sub-station equipment. We find it not only leads to accuracy but to confidence in the results obtained. This particular work was performed in that connection by Mr. Reed, who also analyzed the construction of the central station and some of the minor counts. He was in general charge of the whole

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work. On the transmission and distribution system the estimates were prepared by Mr. Mitchell, and in the sub-station by Mr. Favor. With respect to steam heat and railway properties the pricing was done by Mr. Bredin.

Q. This entire report was gotten up under your general supervision, was it not? A. Yes, sir.

Q. For the purpose of the record, this volume contains, first, the transmittal letter, in which is contained on the second page the total direct costs and indirect costs, thereby reaching the aggregate reproduction cost new of the properties of each of the four companies mentioned in the report, is that right? A. Yes, sir.

Q. And followed by a similar statement as to the depreciated reproduction cost of the properties of each of the four companies? A. Yes, sir.

Q. The letter or the transmittal to which I have referred in my last question is the letter of transmittal of Day & Zimmerman, addressed to the York Railways Company, is it not? A. Yes, sir.

Q. Why is the letter addressed to the York Railways Company, as distinguished from the respondent? A. Because we were retained by the York Railways Company.

Q. To make this study? A. Yes, sir.

Q. Study of the reproduction cost of the properties of all four of these companies? A. Yes, sir.

Q. So that there may be no misunderstanding, that answer is not intended to carry with it any suggestion that the entire cost of this will be borne by the York Railways Company? A. I do not think so. Our work is in connection with the rate case of the respondent. I do not know how they are going to divide the cost on the Companies' books. I think the senior officer of the group happens to be the president of the York Railways Company, and they asked us to do the job.

Q. Referring to page one of the exhibit, will you state what is intended to be reflected on that sheet? A. On Sheet No. 1

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of Exhibit No. 1, or Respondent's Exhibit No. 2, that shows the estimated cost of reproduction new and less accrued depreciation by accounts, for the property of the Edison Light and Power Company. The total reproduction cost of the physical property, which of course is exclusive of working capital or going concern value, is \$5,694,494.

By the Commissioner:

Q. There are several sheets ~~one~~. Do you mean the sheet one in the section relating to the Edison Light and Power Company? A. Yes, sir.

Q. Page one of that particular section? A. Yes, sir.

By Mr. Miles:

Q. For the sake of clarity, from there on throughout the balance of the report the pages are consecutively numbered? A. Yes, sir.

Q. You have stated the conclusion reached by Day & Zimmerman as to the reproduction cost new of the property. Will you now state what the conclusion was as to the depreciated reproduction cost of the property of respondent, exclusive of any allowance for going value or working capital? A. The estimated cost, reproduction cost, of the physical property of the Edison Light and Power Company, less accrued depreciation, we found to be \$4,995,406.

Q. The account numbers indicated on page one of the report relating to the Edison Light and Power Company is in accordance with the accounting system of the Pennsylvania Public Service Commission, is it not? A. Yes, sir.

Q. Referring to page two, will you state for the purpose of the record what recapitulation has been made on that sheet as to the reproduction costs of the respondent's properties? A. Page two of that part of the exhibit relating to the Edison Light and Power Company shows by accounts the division of

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the property by political sub-divisions in the territory which it serves.

Q. In other words, there has been allocated to each borough or township that portion of the physical property of the borough that is erected or installed in that particular political subdivision? A. Yes, sir.

Q. The property so allocated to each sub-division has been priced and the prices are shown on this sheet? A. Yes, sir.

Q. Page 2-A is a mere continuation of the same allocation, and page 2-B is likewise? A. Yes, sir.

Q. Beginning at page 3, is the reproduction cost new of the respondent's property for the various units comprising or embraced within the appropriate account numbers? A. Yes, sir.

Q. In connection with the estimates of accrued depreciation which have been applied against the reproduction cost new, does the report attempt to show the depreciation attributable to each unit of the Company, or is the depreciation expressed only in relation to the property embraced within a particular account number? A. As set forth in the report, the depreciation which is shown represents the depreciation, or rather, perhaps more correctly represents the reproduction cost new less accrued depreciation by accounts, not by individual units of property. In the preparation of depreciation studies we are accustomed to consider the property as a utility property, not as a collection of individual units. For that reason, while we too with respect to major units of property develop the accrued depreciation, which in our judgment exists in these units, and a weighted average for the account as a whole, for certain of the accounts we necessarily apply a judgment which affects the entire account. This however we can explain further by saying, with respect, for example, to sub-stations. The sub-station as a whole is taken as a unit, consisting of individual units of property, and the sub-station account, the account for the entire sub-station is depreciated as a unit. That would

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be true of boiler installation. For example, I might say that a boiler might have been in service for some time and it may have a new feed pump, and by the time the boiler is retired from service the new feed pump goes with it, so that there would be no point in applying a weighted average there because when that boiler goes out the pump goes with it, whether it is new or old. We regard that as a unit of property rather than a collection of individual units.

Q. Illustrating your approach with respect to the account involving poles, you have not depreciated each pole in this report but have arrived at an estimate on the group depreciation of all of the poles treated collectively? A. That is correct. It does not follow however that that conclusion is arrived at without a study of the individual units of property, but it is our conception that the utility property is one unit in itself, and it has to function, under the requirement of the law it must continue to function so long as it is maintained in a proper operating condition. From that standpoint it has suffered no depreciation. At the same time property does require renewal and replacement from time to time for various causes. Some of these causes are related to inadequacy. Some of these causes are related to obsolescence, but obsolescence is more difficult to determine because usually when obsolescence occurs it is complete or before it has occurred you do not know that it is there, and when you once know it has occurred it is done. There is however a definite mark of obsolescence which has to be kept in mind in accruing depreciation.

Q. You have stated that Messrs. Reed, Mitchell, Favor and Bredin were primarily responsible for the estimates of the reproduction cost new of the various units of property. Did those same men direct the work incident to the conclusions of Day & Zimmermann with respect to accrued depreciation on those same units? A. Yes, sir.

Q. Who was responsible for the conclusions reached in this

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report or disclosed in this report, as to the proper allowance for what is commonly known as general overhead? A. I prepared them.

Q. Did you prepare those with respect to the railways company, the steam heating company and the bus company, as well as the respondent? A. Yes, sir.

Q. I believe you have testified that there was nothing included in the estimate of reproduction cost new or depreciated reproduction cost of the property of the respondent, as working capital or going value? A. Yes, sir.

Q. The same is true with respect to the estimates of reproduction cost new and depreciated of the properties of the railways company, the steam heating company and of the bus company? A. Yes, sir.

Q. In the course of the investigation of Day & Zimmermann in this case, I would like to inquire whether you found any instance where property solely dedicated to the use by the electric company is actually owned by the railways company? A. Yes, sir.

Q. Did you find instances where properties built by the railways company at its expense are used exclusively by the electric company? A. Yes, sir.

Q. Did you find instances where properties built by and owned by the railways company are used jointly by it and the respondent? A. Yes, sir.

Cross Examination.

By Mr. Miller:

Q. What instance did you find of property paid for by the York Railways Company, used by respondent? A. The transmission lines, the sub-station equipment.

By the Commissioner:

Q. To transmit power to whom? A. To the general public.

Clarence A. Mitchell—For Respondent—Direct

By Mr. Miller:

Q. Wouldn't they be distribution lines? A. No, transmission lines.

Q. Do you have tabulations of the lines? A. We have prepared one.

Q. You propose to put in evidence a statement as to that property? A. Yes, sir.

Mr. Miller: That is all I have with this witness at the present time. We would like to defer further cross-examination until later.

The Commissioner: It is understood that any of these witnesses, where the examination is deferred, will be recalled for cross-examination after they complete their testimony.

Mr. Miles: That is agreeable to us. I would like to state that I understand that there are one or two days when Mr. Seelye will be required to appear before the New York Commission in Syracuse.

The Commissioner: Of course anything of that sort will be adjusted to the convenience of the witness.

CLARENCE A. MITCHELL having been duly sworn was examined and testified as follows:

Direct Examination.

By Mr. Miles:

Q. Mr. Mitchell what is your full name and occupation? A. Clarence A. Mitchell, employed by Day & Zimmerman Inc., as appraisal engineer.

Q. Will you state what your education in engineering is? A. I was graduated in electrical engineering from Vanderbilt University in the Class of 1919.

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Q. Will you state what has been your experience in connection with the construction of public utility properties and your general engineering experience, with particular reference to electrical transmission and distribution properties? A. After graduating in 1919 I accepted a position with Dwight P. Robinson & Company as general foreman in charge of steel tower and wood pole line construction for the Duquesne Light Company of Pittsburgh, the first project consisting of approximately two hundred circuit miles of sixty-six k v steel tower lines from Colfax to Woodville. My duties on this project consisted of supervision over the clearing of the right of way, excavation, erection of towers, constructing condensers. In connection with this line I also had charge of constructing an outdoor sub-station at Dravosburg and Wilmerding. After this project I constructed a fifteen mile twenty-two k v wood pole line from Pine Creek sub-station to Verona, Pennsylvania, also a twenty mile twenty-two k v wood pole line from Pine Creek to East End sub-station. Upon completion of this line I constructed a thirty mile twenty-two k v of wood pole line from Ambridge to Rochester, Pennsylvania. This line included eight special steel towers for river crossing purposes, across the Ohio River.

By the Commissioner:

Q. Is it still standing? A. Yes, sir, as far as I know. During this period I also constructed several special river crossing towers over the Monongahela River and the Allegheny River in Pittsburgh. After completing the transmission line projects I had charge of constructing a distribution sub-station, outdoor switching structure, at Wilkinsburg, Pennsylvania, and several steel structure switching equipment, located on Brunots Island.

By Mr. Miles:

Q. What you have stated up to this time, as I understand it, relates to certain projects on which you have worked prior to your association with Day & Zimmerman? A. Yes, sir.

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Q. I would like to get to the point where you became associated with Day & Zimmerman, and have a brief resume of your activities since your association with that firm? A. You mean Day & Zimmerman, Inc.?

Q. Yes; Day & Zimmerman Construction Company? A. In 1923 I was employed by Day & Zimmerman Engineering and Construction Company as superintendent in charge of steel tower and wood pole line construction for the Penn Central Light and Power Company, the first project consisting of approximately one hundred circuit miles of one hundred and ten k v steel tower line from Saxton to Lewistown, Pennsylvania. After completion of this project I constructed twenty-five miles of forty-four k v wood pole line from Cresson to Revlock.

Mr. Miller: I am willing to admit the qualifications of the witness.

By Mr. Miles:

Q. There are just one or two things that I want to ask the witness. Have you had any experience in connection with the preparation of inventories or reproduction cost appraisals for use before State regulatory bodies? A. Yes, sir, I have had experience in making inventories and reproduction cost estimates in connection with the Public Service Corporation of New Jersey and the Connecticut Light and Power Company, and more recently the Syracuse Lighting Company. In this case I inventoried the property and made the estimates for the reproduction cost estimates.

Q. You have testified, I believe, in rate matters and valuation proceedings? A. For the Syracuse Lighting Company I testified for all of the distribution and transmission companies.

Q. Before the New York Public Service Commission? A. Yes, sir.

Q. Is it a fair statement to say that since 1920 the greater

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part of your time has been continuously devoted to matters relating to the construction of electric properties, particularly transmission and distribution, and the making of cost studies with respect to the same? A. Yes, sir.

Q. Referring to the work sheets or notes, Mr. Mitchell, I would like to inquire whether you supervised the estimates of reproduction cost, as shown in Respondent's Exhibit No. 2 for the units of property embraced within account numbers 239, 242, 243, 244, 245, 246, 254, 257, 258, 259, 260, 262, 266, 267 and 278? A. Yes, sir, and in addition to that I believe you omitted account 256, poles and fixtures.

Q. That is right. I thank you. With the addition that you have made, to the account numbers I have referred to include all of those with respect to which you have been concerned in this case? A. Yes, sir.

Q. Will you refer to account number 256, which is shown on page 125 of Respondent's Exhibit No. 2? A. Yes, sir.

Q. It relates to poles and fixtures of the distribution system of respondent? A. Yes, sir.

Q. Will you explain in your own way Mr. Mitchell how you obtain your prices for material and labor that make up the aggregate unit costs indicates on those pages? A. We will begin by taking for example the unit price for a thirty-five foot Western red cedar pole. After the inventory was completed, I sent letters to several of the Western red cedar pole concerns, I believe there were four of them, and asked for quotations, competitive prices for thirty-five and forty and various sizes of Western red cedar poles, with the specification half inch, Pentrex treatment, and asked for quotations delivered to York, Pennsylvania in carload lots. We secured, as I say, four of these letters, and I selected the quotation which was the lowest from the concern which happened to be in this case the Carney Pole Company. They submitted the lowest unit price and so I used them for the material price—

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Q. Right at that point, you say you asked for four bids of manufacturers of poles? A. Yes, sir.

Q. You selected as the adoption of your base material price the lowest of the four bids that you received? A. Yes, sir.

Q. Which bids were quoted on prices with the delivery of the poles to York, Pennsylvania? A. Yes, sir.

Q. Let me ask you Mr. Mitchell whether in connection with your experience to which you have referred, you have had personal connection from time to time or have had personal occasion from time to time to purchase poles in large quantities? A. Yes, sir, a great many times.

Q. You therefore were in a position to form an independent judgment as to the reasonableness of the quotations submitted to you by the manufacturers? A. Yes, sir. I a very familiar with current quotations.

Q. You keep yourself posted as to the current prices of poles and other equipment represented within this account number? A. Yes, sir.

Q. Would you say that the quotations that you received from these four manufacturers were quotations that they would have rendered to a party or some prospective purchaser? A. Yes, sir, I think they were competitive prices, and I would expect to receive the same offer or quotation if I had been purchasing a carload of those poles.

Q. Are you familiar with the prices paid from time to time in recent months by the Edison Light and Power Company for the purchase of poles? A. Yes, sir.

Q. Would you say that the quotations that you received from those manufacturers were supported by quotations or supported by prices paid by the respondent? A. Yes, sir, they were comparable to the prices.

Q. Go ahead, I interrupted you. A. After we had established the unit price for the material for thirty-five foot Western red cedar poles, I then established the labor unit price.

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For instance, under labor is unloading and stacking poles, and for this thirty-five foot pole I have estimated a price of twenty-six cents per pole. After the unloading and stacking we have a distribution of the pole in operation, on which we have unit prices. Is it necessary to give the unit prices?

Q. No. A. Then we have a price of digging the poles, setting the poles, and that gives the total labor unit for a thirty-five foot pole in place. Then we have equipment costs, equipment used in unloading and stacking the poles.

Q. Pardon me, before we get to the equipment costs, I assume in your supervision of labor costs you used the hourly rate prevailing in the City of York, and if not, what was the basis for the unit costs that you applied to labor? A. I established the labor rate base on my experience in doing construction work on a large scale basis, that we would have to pay to bring men in for this class of work. It has been my experience in all this kind of work that always invariably we have to pay more money for our line men and ground men than the utility is actually paying on an hourly rate. Our hourly rate is sometimes as much as sixteen to twenty cents an hour greater, from my experience.

By the Commissioner:

Q. Whose hourly rate? A. In this estimate.

Q. The estimate you put in here? A. Yes, sir; it does not necessarily represent the rate paid by the Edison Light and Power Company.

Q. Why not? A. Because it has been my experience we are never able to secure men at this low hourly rate because we do not give the men the advantages that the local utilities do. They are hired by the year, they are paid on regular days and they get other compensation, while our men working on a temporary project two months at a time, are only paid for the hours that they put in, and we have to pay a higher rate than the steady workers receive.

Clarence A. Mitchell—For Respondent—Direct

By Mr. Miles:

Q. Have you any judgment as to whether there would be sufficient labor available in York to construct a project of this size? A. No, sir, there would not be sufficient line men in York to reconstruct this entire property.

Q. And the labor that you have assumed would be necessary to import to build these lines, is that the type of labor that would construct lines with a higher degree of efficiency and in less time than the labor available in York? A. We would not have experienced line men in York and we would have to import our labor.

Q. Go ahead with your equipment costs. A. We have set up equipment costs for unloading and stacking poles, equipment costs for distribution of poles, equipment costs for digging holes and setting the poles.

By the Commissioner:

Q. On page 125 you have four twenty foot chestnut poles at ten dollars a pole, or forty dollars? A. Yes, sir.

Q. What does that ten dollars include? A. That includes material, labor, equipment, direct engineering supervision.

Q. Plus the cost of the pole? A. Yes, sir.

By Mr. Miles:

Q. In other words, to expand a little on the Commission's question, at page 125 there appears in the first item of the sheet four twenty foot cedar poles and the price opposite that is forty-seven dollars. As I understand it, that is intended to be the estimate of Day & Zimmerman of the cost to reproduce new four twenty foot cedar poles, installed in place? A. Yes, sir.

Q. And that amount includes the cost of material, the cost of labor and any other expenses incidental to the installation of the material— A. Yes, sir.

Clarence A. Mitchell—For Respondent—Direct

Q. The same is true with respect to each item shown? A. Yes, sir.

Q. Under account 256? A. Yes, sir.

Q. Take account 266 Mr. Mitchell, relating to meters forming a part of the distribution system, and which is referred to on page 214 of Respondent's Exhibit No. 2, and I select that item because it is an appreciable one in the reproduction cost of the property. Will you state the basis of the estimate as to the reproduction cost of the meters, that is to say, from what source you obtained your unit cost of materials and the basis of your allocation of the cost of labor? A. In this account 266 it only includes the cost of the meter, with the cost of freight and store room handling and testing, making out the necessary cards, meter cards, record cards, badging meters. There is no other labor involved except the unit price for the material secured from the General Electric price sheets, and with a discount applied comparable to the discount that the Edison Light and Power receives at the present time.

Q. In other words, you assumed therefore that the cost of materials there is the basis upon which the Edison Light and Power Company could purchase meters in the open market?

A. Yes, sir, the same prices.

Q. What do you say about the installation cost? A. The installation cost is in account 267.

Q. Account 266 embodies only the material? A. Yes, sir, plus testing and badging.

Q. Suppose we go on with account 267 to show how you arrived at the cost incident to the installation of the meters?

A. In this case, the same as we have in all of the other accounts the first thing we do is to establish a typical crew that we will use in the various labor operations. According to my experience I determined the performance that this particular crew would be able to do, and from that I arrive at a unit price, based on the labor rates which we set up. In the case

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of installing the meters is a crew established consisting of one foreman, six meter installers, seven second class line men, one truck driver. We have a two and a half ton truck with the crew. This crew will install an average of ninety-six meters per day, that is, taking all of the two wire and three wire combined. That is a unit cost for meter installation of seventy-three cents, including labor, equipment, field office and supervision expense.

Q. From your experience with comparable situations, that is the minimum crew that this sort of a job could be done with properly? A. Yes, sir, from my experience that is a typical crew and their performance is typical.

By the Commissioner:

Q. You have provided an adequate crew in your calculation?

A. Yes, sir.

Q. Therefore, the job on that basis could be done with more work done per dollar than if you had an inadequate crew? A. Yes, sir.

By Mr. Miles:

Q. Now, there is one other account number Mr. Mitchell, because of its relative size. I would like to refer you to these overhead conductors in account 257, as well as overhead transformers in account 258. They appear at pages beginning with page 151 of Respondent's Exhibit No. 2. Will you state the manner in which you arrive at the unit price for materials? A. The unit prices for the materials, for the bare copper water proof conductor, these prices were secured from current quotations, with the freight calculated from the Anaconda Copper Wire and Cable Company, the Anaconda Copper Company supplying you with a base of price for copper on that particular day or period, and from that you work out your extras for stranding and for water proofing and for large quantity discounts, and for reeling and so on. From that base we estab-

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lish the unit pound price that is used in our reproduction cost estimate for the various sizes of wire.

Q. Where is the Anaconda plant located? A. They have several plants all over the country. They have one, I believe, in Connecticut, I believe it is Seymore. I secured freight charges,—that is figured on the freight rate base that the Anaconda people give you for any point in the Eastern zone.

By the Commissioner:

Q. They have plants in the West and they have distributing centers in the East? A. Yes.

By Mr. Miles:

Q. That would be the freight from the nearest Anaconda plant? A. Yes, sir.

Q. How did you get your prices on the overhead transformers in account 258? A. They were secured in the same manner as the meter prices from the manufacturer, applying the discount rates that exist at the present time with the Edison Light and Power and the General Electric Company.

Q. The prices that you have used are the prices that the Edison Light and Power Company could purchase in quantities and at the discount to which they are entitled? A. Yes, sir.

Q. To complete this discussion of the transformer costs, how did you arrive at your estimates for installation of overhead transformers, as reflected in account 259 beginning at page 188 of Respondent's Exhibit No. 2? A. That was arrived at in a similar way by setting up a typical crew and establishing a performance for that crew and applying the labor rate to the various members of the crew, and arriving at a unit price.

Q. Mr. Mitchell you have explained some five or six typical accounts and the method you used for arriving at the reproduction cost of the property embraced within those accounts. I

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would like to refer to the question of your calculation of accrued depreciation, going back to the first question which we discussed, namely poles and fixtures, under account 256. Will you state in your own way the method of your approach to your findings of accrued depreciation? A. At the time of the inventory I personally supervised the inventory and actually inventoried about thirty per cent. of the property. At the time of this inventory each man was instructed to note on the inventory sheet the condition that he found the poles, the cross arms, the guy wire, and so forth, in the account, on each street and each section in which the inventory was taken, marking excellent condition, good, or fair condition. After studying all of those reports I made a personal inspection of all of the property, riding up and down the various streets, looking at the condition of the property, and considered the maintenance policy and the condition as a whole of that account, and applied a judgment figure of ten per cent. depreciation against account 256. I also considered the type of poles that the Company was purchasing and the general appearance of the entire distribution system.

Q. How did you arrive at your estimates of accrued depreciation on meters, and while you are discussing it, also how did you arrive at your estimates on overhead conductors and transformers? A. In arriving at a depreciation figure on meters it has been the experience of various companies that the meters do not depreciate very rapidly, unless you have a considerable number of meters, that were purchased prior to, say, 1914, you are unable to compensate for immature changes. That meter account has a very low depreciation, and I found in this Company that their meters, the majority of them, were purchased in recent years and they have constant inspection of the meters, they are maintained and repaired, and for that reason I considered all of those conditions and depreciated the meter account five per cent. The meter installation account I

Clarence A. Mitchell—For Respondent—Direct

depreciated three per cent., due to the interpretation of the Public Service classification of accounts. Overhead transformers, I handled in a little different manner. In all of the boroughs, that is outside the City of York, in the territory outside the City of York, they have practically all new transformers. A considerable amount of rural electrification has been going on in the last two years, which required a considerable amount of new transformers, new type of transformers, and for that reason in all of the transformers outside of the City of York, that is depreciated five per cent. In the City of York we have a little different situation. I believe it is the Company's policy this year, or it will be within the next two years, to change over their present twenty-three hundred volt system to a forty-six hundred volt system. It is going to mean that a lot of the present twenty-three hundred volt transformers will have to be rewound, which will require a greater depreciation set-up. For that reason I have given the transformer account in York fifteen per cent. depreciation, and by taking a weighted average of the two I have a weighted average of the fifteen per cent., and five per cent., and it gives you a weighted average of about nine per cent., 'by using' that method.

Q. Mr. Mitchell, this same method of approach that you have described with respect to the manner in which you make your estimates of the reproduction cost of the materials and the cost of labor in connection with transformers and poles and fixtures and meters and conductors, has been followed in the few remaining accounts that you supervised? A. Yes, sir.

Q. And likewise generally speaking, the same method of approach to the question of depreciation, that is to say, physical examination of the property and the formation of a judgment opinion as to its present condition? A. Yes, sir.

Mr. Miles: You may cross-examine.

Clarence A. Mitchell—For Respondent—Direct

Mr. Miller: I would like to defer cross-examination of this witness as in Mr. Seelye's case, with the same understanding.

The Commissioner: Very well.

Recess until 1:45 o'clock p.m.

1:45 o'clock p.m.

AFTERNOON SESSION.

CLARENCE A. MITCHELL resumed stand.

By Mr. Miles:

Q. Mr. Mitchell, referring to your testimony relating to the costs of labor that you have used in arriving at the reproduction cost estimates for the property embraced in the accounts regarding which you have testified, I should like to ask you if you have among your work sheets any comparison of the hourly rate for labor that you have used, and that actually experienced by the respondent itself? A. Yes, sir, I have that comparison.

Q. Will you state for the record what that comparison shows? A. The labor rates that I have used throughout all of the operations of the various accounts that I am responsible for are the following:

Line foreman, 90 cents per hour.

Edison Light and Power rate for that type of man is 95 cents per hour.

First-class lineman, 80 cents, used in our estimate.

A 73 cent rate is paid by the Edison Light and Power.

Second-class lineman, sixty-five cents per hour, used in our estimate.

Sixty-five cents per hour paid by the Edison Company.

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Ground man, we have used 50 cents per hour in our estimate.

The Edison Light and Power are paying 44 cents per hour.

On labor, we have used 40 cents per hour for labor.

The Edison Light and Power are paying 44 cents per hour.

Q. What sort of labor is there? A. The labor that I have used for 40 cents is the common labor, whereas the Edison Light and Power Company's labor is the same as their ground man, which is a little higher class labor than the common labor. For truck driver I have used 50 cents an hour in our estimate; against 57 cents an hour paid by the Edison Light and Power Company. For labor foreman I have used 75 cents per hour in our estimate, against 73 cents per hour paid by the Edison Light and Power Company.

Q. Do I understand from the comparison which you have just stated for the record that there were only two instances where the hourly cost of labor experienced by the Edison Company is less than the cost of labor which you have used in your estimate? A. Yes, sir, that is correct.

Q. Having in mind the fact that the Edison Company is experiencing a higher cost per hour for labor, why do you believe that you could obtain labor at the rate you have elected to use in your estimates? A. From my experience in hiring men, using men all around the country, I naturally have quite a following of men, and if I need any number of experienced linemen, or second-class linemen, I can get them at these rates. That has been my experience, that we would not have to pay more than these hourly rates to secure enough men to reproduce this property in this section.

Q. In other words, you have contacts with the labor market, so to speak, because of the various construction jobs that you have supervised, and you feel that there would be a sufficient number of men available at the rates you used? A. Yes, sir.

Clarence A. Mitchell—For Respondent—Direct

Q. For the purpose of the record Mr. Mitchell will you read the reproduction cost new and depreciated estimate that you have made for each of the property accounts that you supervised? In other words, beginning with account 239, will you state what you found as to reproduction cost new and depreciated for the property embraced within that account? A. In account 239, which is rights of way under transmission system, we have estimated reproduction cost new at \$1,486.

Q. Did you find any depreciation in that account? A. No, sir, we used the same figure for depreciation. Less accrued depreciation has the same amount.

Q. Take up account 242. A. Account 242, poles and fixtures on the transmission system, we have in our reproduction cost estimate new \$70,543; less accrued depreciation \$63,489.

Q. Take up account 243. A. Account 243, overhead conductors under the transmission system, our reproduction estimate new is \$102,095; less accrued depreciation \$96,990.

Q. Account No. 244? A. Account No. 244, overhead telephone system, our reproduction cost estimate new is \$841; less accrued depreciation, \$799.

Q. Account 245? A. Account 245, underground conduits, our reproduction cost estimate new is \$14,302; less accrued depreciation \$13,507.

Q. Account No. 246? A. Account 246, underground conductors, reproduction cost estimate new is \$8,183; less accrued depreciation \$7,774.

Q. Account 254? A. Account 254, rights of way under distribution system, reproduction cost estimate new is \$846; accrued depreciation the same amount.

Q. In other words, there is no accrued depreciation? A. No accrued depreciation.

Q. Account 256? A. Account 256, poles and fixtures, distribution system, the reproduction cost estimate new is \$520,559; less accrued depreciation \$468,503.

Clarence A. Mitchell—For Respondent—Cross

Q. Account 257? A. Account 257, overhead conductors distribution system, reproduction cost estimate new is \$436,446; less accrued depreciation \$414,624.

Q. Account 258? A. Account 258, overhead transformers, reproduction cost estimate new is \$377,355; less accrued depreciation \$345,152.

Q. Account 259? A. Account 259, overhead transformer installation, reproduction cost estimate new is \$37,281; less accrued depreciation \$35,290.

Q. Account 266,—rather account 260? A. Account 260, overhead services, the reproduction cost estimate new is \$142,889; less accrued depreciation \$135,745.

Q. Account 262? A. Account 262, underground conductors under the distribution system, reproduction cost estimate new is \$8,283; less accrued depreciation \$7,869.

Q. Account 266? A. Account 266, meters, reproduction cost estimate new is \$296,106; less accrued depreciation \$281,301.

Q. Account 267? A. Account 267, meter installations, reproduction cost estimate new is \$25,302; less accrued depreciation \$24,543.

Q. The last account for which you were responsible is embraced within account 273? A. Account 273, municipal street incandescent system, reproduction cost estimate new \$246,318; less accrued depreciation \$221,686.

Cross Examination

By Mr. Miller:

Q. I just like to ask one question. What overheads did you include in your estimated cost of reproduction for poles, for example? A. I included the direct engineering and supervision, purchasing of material, design, survey—

Q. By survey what do you mean? A. Surveying and laying out the distribution lines, preparing the prices.

Clarence A. Mitchell—For Respondent—Cross

Q. Did you have any contractor's profit in there? A. No, sir.

Q. Will you turn to page 125 of respondent's exhibit No. 2, taking the fourth figure from the top, 1,012. I take it that is 1,012 poles, is that right? A. Yes, sir.

Q. In account 256? A. Yes, sir.

Q. And the corresponding price of \$21,647. Will you tell me how you arrive at the cost per pole of that? A. The material price per unit, f. o. b. York, for the 35 foot Western red cedar pole is \$13.54.

Q. That is the pole alone? A. That is the pole alone, yes, sir. The labor for that pole is \$3.48.

Q. How many hours do you figure on in that labor? A. That labor is made up of unloading and stacking the poles, distributing of poles, digging holes and setting the poles.

Q. Can you give me the number of hours? A. I can give you the performance of that crew during that operation. It is the same.

Q. How did you arrive at your \$3.48? A. By establishing a crew for unloading and stacking, which gave me a price of twenty-six cents per pole; establishing a crew for loading and distributing poles for their location, which gave me a price of 44 cents per pole; establishing a crew for digging the holes, setting the poles, which gave me a price of \$2.78 per pole. That gives me a total labor price of \$3.48.

Q. What hourly rate for labor did you use in that computation? A. I used eighty cents an hour for first-class line men—

Q. Where would that be used? A. That would be used in setting the poles; sixty-five cents an hour for second-class line men; fifty cents an hour for ground men, forty cents an hour for labor; fifty cents an hour for truck driver.

Q. What kind of labor would be used mostly in this operation of transferring a pole from the car and setting it up? A.

Clarence A. Mitchell—For Respondent—Cross

For instance, the crew to unload and stack the poles consists of one material foreman, one second-class line man, three laborers, one tractor operator that would unload the poles and stack them in the yard. The crew for distributing the poles consists of one material foreman, one material checker, one laborer, one truck driver.

Q. We have the pole and the labor. What is the next item?

A. We have the equipment, the equipment cost for unloading and stacking for that particular pole is thirteen cents per pole; distribution of poles sixty-three cents; digging holes and setting poles \$1.32. That gives a total equipment charge for that pole of \$2.08.

Q. Any other items in that pole cost? A. That gives you a total of material, labor and equipment for that thirty-five foot pole of \$19.10. To that we have added direct engineering, field office supervision, a percentage of twelve per cent. \$2.29, arriving at a total unit price for a thirty-five foot Western Red Cedar pole in place \$21.39.

Q. You multiply that unit price by the number of poles determined from your inventory? A. Yes, sir.

Q. And you arrive at the twenty-one thousand dollar figure? A. Yes, sir.

Mr. Miller: That is all for the present.

Mr. Miles: We would like to recall Mr. Reed, who has been previously sworn, and while he is on the stand in connection with the various accounts which he supervised, is there any objection to his assistant, Mr. Erickson, who has a great deal of supporting data in his books, to sit near him, where he can be available?

Mr. Miller: We have no objection.

Harry A. Reed—For Respondent—Direct

HARRY A. REED, being recalled, testified as follows:

Direct Examination

By Mr. Miles:

Q. Mr. Reed, I believe you have stated your qualifications for the record? A. Yes, sir.

Q. I should like to ask you, and if you will follow me by reference to your own notes, whether you supervised the estimates as shown in Respondent's Exhibit No. 2, with respect to the reproduction cost new and depreciated of the property embraced within account numbers 204, 207, 208, 237, 240, 275, 276, 278, 279, 280, 281, 282, 284, 285, and 286, as well as those embraced within the account numbers relating to the generating facilities and included within account numbers 209, 210, 211, 214 and 215? A. That is correct.

Q. They are all of the account numbers that you have been concerned with in this estimate? A. Yes, sir.

Q. Of the electric property? A. Yes, sir.

Q. That is to say, all of the account numbers that I have referred to, which you have identified as having supervised the estimates, relate only to the electric property? A. Yes, sir.

Q. Will you take the first of the accounts enumerated in my previous question and explain the method employed by the company, by Day & Zimmerman, in reaching their conclusions as to the reproduction cost new of the land, which is embodied in account number 204? A. The figures which we have used in this report, referring to land, in account 204, are the result of an appraisal which we caused to be made by a qualified appraiser familiar with land conditions and land valuations in the territory comprising York and its suburban sections.

Q. That appraisal was for the purpose of establishing the appraiser's judgment as to value of that land as of November 30, 1936? A. Yes, sir.

Q. Was the appraiser in question a resident and engaged in

Harry A. Reed—For Respondent—Direct

business in York, Pennsylvania? A. Yes, sir, and had been for a good many years.

Q. Will you state who the appraiser was? A. Thomas C. Mills of York, Pennsylvania.

Q. So that the figures shown on page three are Mr. Mills' appraisals for the three lots referred to, or the sites referred to on the page? A. Yes, sir.

Q. Referring to account 207, which has to do with structures in the steam generating system, will you explain the method employed by you in arriving, first, at the unit costs of material, and then the cost applicable to labor? That account, I believe, is shown on page four, at the beginning of page four?

A. As a result of having prepared a detailed inventory of the various materials that entered into the construction of this turbine room, we became familiar with the kind of material and the kind of labor that would be required to build such a structure. With this information we then secured prices for the various principal items of material. In some cases prices were obtained from sources available in the City of York, and in the case of specialized material, usually obtainable only through large centers, we went to sources in Philadelphia, Baltimore and Harrisburg for the necessary information. As to material like crushed stone, sand and cement, as well as brick and lumber, the prices are prices that are being paid and were at that time being paid in York for work of that type that we are considering. It would be prices prevalent during the month of November, 1936. As to the prices we have used in our unit costs for labor, we obtained the rates prevailing in York for November, 1936 from a contractor operating in York and who was thoroughly familiar as a result of his current business with those rates. We were informed by him that there was not an adequate supply of building trade labor in York to permit a contractor to rely on such a supply for the force that will be necessary to engage in a reasonably large building contract. It

Harry A. Reed—For Respondent—Direct

was adequate for small jobs like residence construction, small garages and so forth, but to consider a building like the car barn or the power station—

By the Commissioner:

Q. Do you mean car barn? A. Power station, I beg your pardon, the office building and the various other structures, it would require a large force of building labor to be brought in from either Harrisburg or Baltimore.

By Mr. Miles:

Q. With respect to the costs applicable to such labor as would have to be imported, what is the base for the labor rates that you assumed in such instance? A. We have used the labor rates that prevailed in Harrisburg as of the month of November, 1936, as the base for our labor costs.

Q. On the theory, I take it, that that is the closest point to York where such labor is available? A. Yes, sir.

Q. By way of illustration, Mr. Reed, referring to page four, the various figures shown in the column on the right, as I understand it, indicate the cost of the particular item set opposite each of those figures? A. Yes, sir.

Q. To illustrate, grading and demolition would cost for this particular structure \$207? A. Yes, sir, that is our estimate of cost.

Q. And so on through the various units of property that comprise the structure? A. Yes, sir.

Q. The last four items including contractor's field expense, contractor's profit, owner's completion bond and the architect's fee? A. That is correct.

Q. Having that in mind, I assume then that you prepared this exhibit on the basis that the contract would be awarded to some independent contractor for the construction of this particular structure, and that it would not be done by the Company's own available crew or force? A. That is correct,

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that was our judgment, that it would be more economical for the Company to employ a general contractor to handle the construction of all of the buildings encountered in the Edison Light and Power Company as a basis of this estimate. We have therefore added to the dollars arrived at by the unit cost allowances for the expense that a general contractor would incur in our judgment if he would undertake such a contract.

Q. Will you state for the record the percentage of profit that you have assumed would accrue to a contractor by virtue of the construction of the turbine room, shown on page four of Respondent's Exhibit No. 2? A. We have used eight per cent, as a basis for contractor's profit in the construction of the turbine room in Account 207, on page four.

Q. Has that same percentage of profit been used in all of the structures that are included within this exhibit? A. That is correct for all of the structures in the electric utility.

Q. You include the office building also among those structures? A. Yes, sir.

Q. Will you refer to Account No. 208? The account involves very little, but will you tell us very briefly how were the estimates made, but do not go into much detail because it plays an insignificant part in the aggregate estimate? A. The inventory was based of course on actual measurements of the property in the field. We have applied unit prices for laying forty-six lineal feet of track, and have arrived at a total of \$151 for the track alone. There are two Hayes type wheel stops at an estimated price of \$120. That includes both labor and material. Then there are the allowances for the contractor's organization, which brings the total of that account to \$338.

Q. That would be presumably the same contractor who put up the building? A. It should be by all means, as a part of the work.

Q. You proceeded on that assumption in the preparation of this exhibit? A. Yes, sir.

Harry A. Reed—For Respondent—Direct

Q. The next account which you have supervised is Account No. 237, which is merely another land account, relating to land in the transmission system, and I understand the source of your information in that account was obtained from the same appraiser who appraised the land constituting the part of the generating system? A. Yes, sir.

Q. Account 240 for transmission system structures is your next account, beginning at page 67. Was your approach to a determination of the costs of materials and labor for the units of property embraced within that account the same as you have testified to with respect to power plant structures embodied within Account No. 207? A. The approach and the method are identical.

Q. Account No. 275, general office land, I take it that the appraisal for that is similar to the other land that you have referred to? A. That is correct.

Q. Account No. 278, which is the next—

The Commissioner: You mean the appraisal that was made by Mr. Mills?

The Witness: Yes, sir.

By Mr. Miles:

Q. Your approach and method for arriving at your estimates for the reproduction cost of general office structures are the same as the structures relating to the generating system and the transmission system? A. Exactly the same.

Q. Referring however to that item for a moment, which is Account No. 278, beginning at page 249, the amount of dollars involved in that structure is substantially more than the dollars involved in the transmission and generating system structures, is it not? A. No, I believe the generating structure, the central power station is the largest unit of property that has been described as a number of individual units. Actually they have

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Harry A. Reed—For Respondent—Direct

one building but it is separated for the purpose of parity in description.

Q. But the different kinds of material involved in this general office structure, as shown on page 249, are more varied than those in the other structures? A. That is correct.

Q. Is it or is it not a fact that the greater part of this material would have to come from points outside of York than is involved in the other structures? A. Generally speaking that is correct.

Q. Take the item of carpentry and mill work, page 249, as one of the units in the general office structure, state how you arrived at the estimate of that particular item? A. Every item of carpentry and mill work in the general office building was identified by class and size on the list of items which we have separately identified and comprise the four pages of details and one of our work sheets, and covers such items as wood and glass partition, studding, sashes and a dozen other classes of carpentry work. Each particular class of installation is priced either on a square foot, a board foot or lineal foot basis, whichever of those bases was customarily used by woodworking mills as the basis for bidding on contract work. Unit prices have been developed and appear in our working papers for each of these classes of installation. When the proper unit price is applied against the quantity for a specific item of material, and then all of these items are totalled, as shown on these working sheets, we arrive at the total of \$18,380, which appears opposite that title on page 249. If you care to go into more minute detail on that, we have the papers and that can be done.

Q. Here again, wherever there was local labor available for work of the character involved, you have applied labor costs at the prevailing York rate, is that correct? A. Wherever we considered we could get labor for the purposes that were required, we have used the York rates.

Harry A. Reed—For Respondent—Direct

Q. Where not available you have used the Harrisburg rates? A. Yes, sir.

Q. In connection with the item of brick work on that same structure, the same method of approach was followed, was it not, in arriving at your figure of \$14,425? A. Yes, sir, there was under the item of brick work two different classes of brick work involved, and two different unit prices had to be developed, common brick and face brick. They take different prices, but combined they arrive at the total as shown on page 249.

Q. Accounts 279, 280, 281, 282, 284, 285, and 286, will you, without going into the same detail, because they are not substantial accounts but just summarize briefly the method employed in arriving at your estimates for the property within those accounts? A. Every item that appears in our report and included within these accounts was actually inventoried, measured and inspected by one of our men. With this inventory as a guide prices were secured from manufacturers direct or from manufacturers' catalogue and list prices, less discount, which we received from manufacturers, and those prices are used to arrive at the total dollars set forth in this report.

Q. I ask you to refer to boiler plants equipment in Account 209, and referred to on page 15 of Respondent's Exhibit No. 2, and I would like you to explain rather carefully the method employed for the purpose of affixing the reproduction cost of the boilers which you have listed on pages 15 and 16, of the exhibit I have just mentioned? A. The reproduction costs which we have used in this study are based in the first instance on the prices quoted by letter from the Babcock and Wilcox Company, for the purpose of a report we made in 1934—

Q. That was in the merger case? A. Yes, sir; inquiries on our part to the Babcock and Wilcox Company in this year 1936 developed that the price they would ask for submitting identical equipment would be ten per cent. higher than they had quoted in 1934. We therefore increased the 1934 delivered

Harry A. Reed—For Respondent—Direct

price by ten per cent. and used that as the cost of the material delivered to the site.

Q: Does that observation apply to all six boilers mentioned on pages 15 and 16? A. Yes, sir.

Q. Go ahead, Mr. Reed. A. We have estimated the amount of labor to be required by applying a percentage to the delivered cost of the boilers, which percentage is based on our own actual experience in erecting this class of boiler. We have also added an estimated amount for small tools in the operation of the equipment, that will be necessary to move these boilers from the cars and to erect and test them, making them ready for operation, and to the total thus arrived at we have added twelve per cent. for field and supervision expense, which would give us the total dollars for each pair of boilers covered by the description on pages 15 and 16 in account 209.

Q. Would any appreciable part of the labor incident to the installation of that equipment of this character be available in York? A. Aside from some common labor which you will probably encounter, I would say that every bit of labor on boiler installation would have to be brought from, most likely Harrisburg, or some other center where a large number of boilers are installed.

Q. To the extent that local labor could be utilized in this installation job, have you reflected its use in your labor costs? A. Yes, sir.

Q. That same approach and method has been followed in arriving at your estimates for all of the items embodied within Account No. 209, relating to boiler plant equipment, has it not?

A. There are minor items appearing in the balance of the description under that account where we obtain telephone quotations from actual manufacturers, or a verification on their part of the price which they have quoted us in 1934, that that price still held true.

Q. But you have used the manufacturer's quotations,

Harry A. Reed—For Respondent—Direct

whether they were the same as included in your 1934 appraisal or not? A. That is correct. In the latter part of Account No. 209, starting on pages 21 and 22, steam piping, all of the prices that are used to arrive at the total shown are taken from the Crane Company, with the discounts applied that were current in the month of November, 1936.

Q. You mean discounts that would be enjoyed by the Edison Company in purchasing equipment? A. Yes, sir.

Q. Account No. 210 which starts at page 24 has to do with the steam engines and turbines in the generating system. Referring to the first item there of the Allis steam engine, how did you form your conclusion as to the estimated reproduction cost new of that unit of property? Mr. Reed, to expedite the matter a little bit, I do not want to take up any more time than is necessary, as a matter of fact, hasn't the use of that steam engine been discontinued by the respondent? A. Yes, sir.

Q. It is not properly now used and useful? A. That is correct.

Q. In view of the fact that that is going to be shown on a subsequent summary, let us skip that and let us confine ourselves to that part of the equipment included within the steam engines and turbines under the generating system in Account 210, which is used and useful in the Public Service. I want to develop the method adopted with respect to arriving at your appraisals for the property embraced in this account? A. The comment that you just made about the non-use of the Allis engine also applies to the lubricating oil equipment amounting to \$833 on the same page. The next unit, a Westinghouse-Leblanc condenser, where there is shown a total of \$15,585 in our reproduction cost estimate, is based on a quotation which came from the Westinghouse Company for delivery of an identical machine to the one now in the power station. Their quotation was for delivery and we have estimated the erection of the unit and have included in the total of \$15,585 the concrete

Harry A. Reed—For Respondent—Direct

foundations on which this unit is supported. As in the description under boilers we have also included an allowance for tools and equipment and further have added twelve per cent. for field expense and supervision to arrive at this total.

Q. Can you give me an approximate estimate of the proportion of the sum of \$15,585 for that unit which is represented by labor? A. The total labor estimated is \$862; the material delivered is \$12,926.

Q. Mr. Reed, referring now to page 25 of Respondent's Exhibit No. 2, and still on the subject of steam engines and turbines, will you state briefly the basis of your estimate of \$30,781 for the miscellaneous items described as one lot of intake and discharge conduits, wells and screen house? A. Our estimate for these items is based on measurements taken in the field to develop quantities for the various operations necessary to complete the installation of the intake and discharge conduits. These operations include earth excavation, rock excavation, backfill, cofferdam, sheet piling, concrete, lumber and so forth. The unit prices for every class of labor and material are indicated on our work sheets and the totals for each class appears there, and the computation shows the same total that we have indicated on page twenty-five in our report.

Q. Turn to Account No. 211, Turbo-generators, comprising a part of the generating system. The first Turbo-generating unit listed on that page indicates an estimated reproduction cost new of \$100,153.00, and the second turbine generator unit you have estimated will cost to reproduce \$51,946. How did you arrive at your estimates for these two rather substantial items? A. We have a letter of quotation from the Westinghouse Electric and Manufacturing Company, quoting delivery prices on each of these items of equipment. We have taken this delivered price and have added to it the amount to represent the cost of labor, for erection, the use of tools and equipment, exactly the same as I described in the case of the boiler

Harry A. Reed—For Respondent—Direct

account. I arrived at the figures which we have indicated on this page.

Q. Your labor calculations have been approached in the same manner? A. Yes, sir.

Q. You have mentioned from time to time that you obtained some of the bids from contractors or manufacturers and in your earlier testimony in this case you have stated some of your experience in connection with construction work, and I would like to ask you whether these various estimates of reproduction cost new that you have made for these generating units and these other items embodied in the generating facilities represent prices which in your judgment it would cost the Edison Company to actually obtain and install such units in place? A. After a study of the way in which these pieces of equipment are installed in the plant of the Edison Company, and based on the quotations we have received from the responsible manufacturers, and my own experience in having installed the identical type of equipment in power stations at other places, I am of the opinion that the prices which we have used in here are the prices that would prevail if we were lubricating this plant as of November, 1936.

Q. If you were making an estimate for the Pennsylvania Light and Power Company or anybody else as to what it would cost to construct and install these various units of property, or new ones of the same type, would you arrive at the same estimates that you have listed in this exhibit? A. Yes, sir.

Q. Would you follow the same method in determining the estimate for that purpose that you would for the purpose you used it here? A. Yes, sir, the same method and I have used it a great many times in actual construction work.

Q. Have you any particular comments to make with respect to accounts No. 214 and 215, which are the last two accounts under your supervision? A. The amounts we have arrived at

Exhibit A. Book—For Information—Excerpt

for the work outlined in Accounts 114 and 115 are based on exactly the same method of quotations from manufacturers for the materials listed, plus, as a number of instances, the manufacturer's quotation for the labor of installation, and in a few cases our own estimate of the labor that will be necessary to complete the installation.

Q. Now, passing Mr. Reed from a consideration of the reproduction cost now to the question of accrued depreciation, let us take Accounts Nos. 106, 107, 111, 114 and 115, all of which relate to the generating facilities of the Company, and I would like to ask you, generally speaking, what has been your method of approach to your determination of the accrued depreciation on these facilities? A. Primarily the accrued depreciation on these facilities is based on a very careful inspection of the various items comprising these accounts, this inspection coupled with the questions submitted to the operating officials, which develops the extent to which the various facilities are used. It also enables us to form an opinion of the Company's maintenance policy. In this particular instance our inspection did not develop the fact that there was any great amount of deferred maintenance. The property as a whole was in excellent condition. Some of the equipment which is now approaching twenty-two years of age, is not as efficient as more modern equipment, and therefore carries with it a certain amount of obsolescence. We have attempted in our study to reflect in our judgment a combination of the elements of wear and tear, obsolescence, inadequacy and changes in the art, and the judgment which we have formed we have expressed in the form of a percent related to the reproduction cost new.

Q. Well now, do I understand, for instance, that in arriving at your estimate of accrued depreciation on these generating facilities, one of the factors that you have considered is the large extent to which the Company purchased its power requirements? A. Yes, sir, we have considered the total load

Henry A. Reed - For Respondent - Interrogatory

which the Company has, the amount of purchase power, the history in the last few years of the extent to which the generating facilities have been used, and form a judgment from that as how much they will probably continue to be used.

By the Commissioner:

Q. How much have they been used in the last two years? A. It has not been a continuous operation. They are not in continuous use, speaking now of the electrical generating facilities. They have been called upon on occasions, as in the early part of 1936, in the flood to operate for a number of hours.

Q. Outside of that one time how many times? A. I do not recall the figures, Mr. Commissioner but we will submit another exhibit—

Q. Do you recall any other time? A. A two thousand kilowatt turbine is in almost constant use during the cold weather season extending from September on through until May.

Q. During the period when they are furnishing steam heat? A. Yes, sir, the five thousand k v unit, aside from the emergency use which it had in 1936, is not ordinarily used as a generator. It has other functions in the system.

By Mr. Miles:

Q. Have you or not given any consideration to the obligations imposed upon the respondent relating to generating facilities, as disclosed in its purchase power contract? A. We have considered that. We also considered the possibility of interruption that might occur from either of the present sources of purchase power. The existing facilities of the Company will not permit it to supply its power obligations from one source alone. Unless they were to rely on the steam generating station to supplant the power that would be cut off from the third source, or replace the power which would be cut off.

Q. Mr. Reed, what have you to say as to the manner in which you have approached your conception of accrued depre-

Harry A. Reed—For Respondent—Direct

ciation on the structures that are involved in your property accounts? Next to the generating facilities that seems to be the largest item with which you are concerned? A. The structure which comprises a steam generating station is primarily a means of support for the equipment which is installed within it. The structure comprising the power station of the Edison Light and Power Company is very well designed, well constructed and well maintained. There is very little evidence of any destruction caused by wear and tear. As long as the structure continues to house the necessary equipment and remains in good condition physically, the amount of depreciation in my opinion that can be applied to it is very small.

Q. How about the depreciation that might properly be applied to the structures in the general property accounts, such as general office structure and other general structures, including accounts 278 and 279? A. There is a certain element of depreciation in the general office building in excess of what we encounter in most of the remaining structures owned by the Edison Light and Power Company. Obsolescence due to age and the type of facilities included in this building, is a very definite factor. In addition to that, the type of design is such that ease of access and moving from one section to another is somewhat impeded, and for that reason, among others, we have judged that there would be more of a depreciation accrued in that structure than in most of the other structures now being used by the Edison Company.

Q. Now Mr. Reed, by way of concluding your testimony and for the purpose of the record, will you please let me have your estimates of the reproduction cost new and depreciated for each of the property accounts included within your testimony, starting with Account 204? A. Account No. 204, land, reproduction cost new is \$44,137; depreciated the same figure.

Q. Account No. 207? A. Account No. 207, structures, the

Harry A. Reed—For Respondent—Direct

reproduction cost new is \$221,898; the depreciated figure is \$214,500.

Q. Account No. 208? A. Account No. 208, railroad sidings and trestles, \$338 new, and \$321 depreciated.

Q. Account No. 237? A. Account No. 237, land, \$11,485 both new and depreciated.

Q. Account No. 240? A. Account No. 240, transmission system structures, \$22,613 new, and \$22,277 depreciated.

Q. Account No. 275? A. Account No. 275, general office land, \$113,625 new, and depreciated the same.

Q. Account No. 276? A. Account No. 276, other general land, \$27,350, new and depreciated.

Q. Account No. 278? A. Account No. 278, general office structures, \$110,505 new, and \$93,929 depreciated.

Q. Account No. 279? A. Account No. 279, other general structures, \$62,378 new, and \$57,595 depreciated.

Q. Account No. 280? A. Account No. 280, general office equipment, \$57,724 new, and \$50,673 depreciated.

Q. Account No. 281? A. Account No. 281, general store equipment, \$3,545 new, and \$3,062 depreciated.

Q. Account No. 282? A. Account No. 282, general shop equipment, \$8,592 new, and \$6,942 depreciated.

Q. Account No. 284? A. Account No. 284, general garage equipment, \$52,551, new, and \$28,903 depreciated.

Q. Account No. 285? A. Account No. 285, general laboratory equipment, \$21,062, new, and \$18,911 depreciated.

Q. Account No. 286? A. Account No. 286, general tools and implements, \$4,297 new, and \$3,667 depreciated.

Q. The account numbers relating to generating facilities, first Account No. 209? A. Account No. 209, boiler plant equipment, \$338,932 new, and \$281,827 depreciated.

Q. Account No. 210? A. Account No. 210, steam engines and turbines, \$82,945 new, and \$43,869 depreciated.

Harry A. Reed—For Respondent—Direct

Q. Account No. 211? A. Account No. 211, Turbo-generators, \$154,972 new, and \$126,724 depreciated. A

Q. Account No. 214? A. Account No. 214, coal storage and weighing equipment, \$23,714 new, and \$18,971 depreciated.

Q. Account No. 215? A. Account No. 215, other power plant equipment, \$10,510 new, and \$9,086 depreciated.

Mr. Miles: You may cross-examine.

By the Commissioner:

Q. The general office structures, the general office at 27 West Market Street, is that building entirely used by this Company, by the Edison Light and Power Company? A. It is a four story building, yes, sir, and they have offices on every floor in that building. There are, it is true, other companies having office space jointly with the Edison Company in that same structure.

Q. They do not pay any rent to the Edison Company for that office space, to the Edison Light and Power Company, or do they? A. They do not pay rent, no, sir.

By Mr. Miles: .

Q. Assuming that these companies were physically divorced and had no relationship one to the other, would you say, that, based on your investigation of that building, the respondent would require substantially that entire building for its own force? A. Yes, sir.

Q. In other words, could there be any appreciable surplus space if the space now occupied by the railways company and the steam-heating company was vacated by those two companies?

Mr. Miller: I cannot see that Mr. Reed is qualified to express an opinion as to that.

Mr. Miles: He was interrogated by the Commissioner as to that.

Harry A. Reed—For Respondent—Cross

The Commissioner: Objection overruled.

A. Appreciably, no.

By the Commissioner:

Q. Well now, Mr. Reed, how do you know that? A. Mr. Commissioner, we have been making a very careful study of the work that all of the departments, all of the employees in that building are doing. That information will be submitted later by Mr. Katz, and based on our analysis of the functions of the employees in that building, the amount of space which is necessary for an employee to have to work reasonably efficiently, it is my opinion that the staff of the Edison Company could comfortably occupy that building without any surplus space other than for normal requirements.

Q. Do you mean to say that the offices of the Edison Light and Power Company are crowded and should be spread out in more space? A. As a result of that overcrowding the Edison Company has found it necessary to rent space in adjoining property to take care of their requirements.

By Mr. Miles:

Q. Isn't it a further fact known to you that the amount of space, additional space that they have rented is more space than that which is occupied by the railways company and the steam heating company in the building? A. That is my impression but the study has not been entirely completed when I left and I would not state that as a fact at this time.

Cross Examination

By Mr. Miller:

Q. Mr. Reed, you stated that you applied an eight per cent. figure to obtain the contractor's profit. Now, to what accounts did you apply that eight per cent. figure? A. All of the structure accounts, the accounts relating to buildings.

Harry A. Bond—For Respondent—Cross

Q. I assume you also applied a percentage to determine an allowance for contingencies? A. Yes, sir.

Q. What was the percentage applied to determine that?

Mr. Miller: Does your last question relate only to structures?

Mr. Miller: Yes.

A. We applied five per cent in our construction of all buildings to cover contingencies and omissions of inventory—

Q. The same percentage is applied to each structural account? A. Yes, sir.

Q. As to field expense, what was the percentage? A. Field expense in structural accounts, eight per cent.

By Mr. Miller:

Q. That percentage applies only to structures? A. Yes, sir.

Q. Buildings only? A. That is correct.

By Mr. Miller:

Q. You mean it would not apply to steam engines and turbines? A. No, sir.

Q. Would it apply to boiler plant equipment? A. No, sir.

Q. What percentage did you apply to arrive at a figure for completion bond of the owner? A. One and one-half per cent.

Q. The architect's fee? A. Architect's fee five per cent on the total, not including owner's completion bond.

Q. What percentage did you apply to Account No. 209, boiler plant equipment cost, to fix the labor cost? I believe you stated you used some percentage to determine the labor cost? A. There was no fixed percentage. Various percentages were used for various types of equipment and various kinds of equipment.

Q. In the boiler plant equipment account? A. Yes, sir. That would vary with the class of material and the place where

Harry A. Reed—For Lieutenant-Cross

is now being installed. It is based on our own operations in similar work.

Q. It would vary as to different items in the account? A. Yes, sir. The percentages would range from approximately five per cent. on some to fifteen per cent. on others, to determine the labor expenditure that we expect to incur.

Q. As to the delivered cost would the same be true or did you have a fixed percentage within the boiler-plant equipment account? A. I do not believe I understand your question.

Q. From the rail head to the point of erection— A. The percentage which we applied for labor includes unloading from cars to its erection in its final location.

Q. That would be included in the five to fifteen per cent.? A. Yes, sir.

Q. It is my understanding that you used twelve per cent. for field and supervision expense in connection with the boiler plant equipment, is that right? A. Yes, sir.

Q. Was that percentage applied generally in cases where you did not have the field expense figure of eight per cent.? In other words, was the twelve per cent. figure used in accounts other than the structural accounts, where construction work was performed? A. In the accounts to which I have testified, covering boiler house installation and turbine house installation and the accessory equipment, I have added twelve per cent. for field expense and supervision only. There is no profit to the contractor included in that figure. In other words, it is our conception that that work would be done by an organization which the company itself would set up to supervise, design and take care of all work incident to the installation of that equipment.

Q. Will you tell me how you arrived at the twelve per cent. for that item? A. The twelve per cent. figure which we have used is intended to include detail engineering design, field supervision, cost of superintendence and the employees necessary in the construction office.

Harry A. Reed—For Respondent—Cross

Q. What I want to know is why you used twelve per cent. rather than ten per cent.? A. I was coming to that. It also covers store room, miscellaneous facilities necessary in a construction operation of this size, my own experience in having built a number of plants quite identical in design, and having kept construction costs on them, I felt that four per cent. of the construction costs is a reasonable figure for making the detailed construction plans and drawings. About four per cent. additional would cover the cost of superintendence, job engineer, inspection and the cost of operating or maintaining the construction office. The other four per cent. which makes up the figure of twelve per cent. is the cost of auditing and the traveling in the inspection of items that have to be inspected in the plant, a temporary production of light and heat, telephone, etc. I have had it on certain types of work as low as eight per cent., and on others as high as twenty-four, but from my own judgment and my own experience on other comparable jobs, I felt that twelve per cent. was reasonable for us to use for that class of work.

Q. As to your depreciation figure did you determine your depreciation on the straight line method or sinking fund method? A. No, sir.

Q. How did you determine it? A. On observation and inspection, a judgment figure.

Q. What did you figure the life of the boiler plant equipment to be? A. I don't know. It depends entirely on the continuance of the maintenance period or time, replacing necessary parts, if they wear out.

Q. I assume you did not use a percentage figure to determine the depreciation? A. I used it as an indication of the relation between the present condition of an item, with its reproduction cost new.

Q. How did you determine the percentage? A. That is a judgment.

Harry A. Reed—For Respondent—Cross

Q. How did you arrive at it? Don't you have to estimate the life of the property and then work out a percentage— A. Personally I did not do it that way.

Q. How did you do it? For instance, take a special account, boiler plant equipment, what percentage did you apply to your reproduction cost new figure to get your depreciation? A. On some items we applied eighty-five per cent.

Q. You depreciated some items eighty-five per cent.? A. No, sir, that was the condition, in other words, the depreciation was fifteen per cent.

Q. How would you determine the fifteen per cent.? Would you go out and look at the property or how would you get the percentage? A. The percentage is simply a convenience for translating into the form of dollars what the depreciation is.

Q. Would you have to estimate the life of the property? A. I personally know of no way of estimating the life of the property. There have been many attempts to establish that but that is purely arbitrary.

Q. How do you determine that fifteen per cent. of the life of the property was gone? A. I do not think that fifteen per cent. of the life of that property has gone because that would be an indication that fifteen per cent. was the wear and tear that exists in that property up to the present time. As a matter of fact, in the question of depreciation the boilers that were well built in the beginning had they been well maintained throughout their life, wear and tear is the least of the elements that enter into a determination of depreciation. Obsolescence is more important. Now, obsolescence in this case is affected by changes in the art. In view of the rapid changes in the art I think that fifteen per cent. is a sufficient figure for accrued depreciation. In this particular instance I think it is, because the main requirements of a boiler in this property today are satisfied by a boiler of the type and of the condition we have. There would be no engineering justification

today for the use of a more modern, high pressure type and more expensive type of boiler for the conditions that were encountered. It might be true of another station but it is not true in this particular case. We regard it as a stand-by plant.

(Recess.)

By Mr. Miller:

Q. Mr. Reed, you used that same method of determining depreciation on all of the accounts to which you applied depreciation? A. Yes, sir, it is a judgment based on inspection and study of the various conditions.

Q. It bears no relation to the age of the property? A. Age has been considered but it is not a determinate in arriving at depreciation.

Q. In other words, the principal determinate is the degree of obsolescence? A. It proved to be in this property, yes, sir.

Q. So that if you were in the course of the remainder of this week furnished information which led you to believe that the plant would be obsolete in a short time, and you went down next week and observed that property, and in the light of that new information you might find it was fifty per cent. depreciated? A. That is possible.

Q. Even one hundred per cent.? A. In some cases that would be true.

Q. And if you could observe it a year from now and there had been no advance in the art or in the method of operation which would affect the obsolescence of that plant, you would probably say that no annual depreciation,—that during that year there had been practically no depreciation, is that right? A. Will you please repeat that question?

Q. Supposing the conditions of the art were the same a year from now as they are now, would you say the property had been depreciated in the course of the year?

Harry A. Reed—For Independent Cross

Mr. Miles: Are you referring to the generating facilities?

Mr. Miller: To all of the property to which he applied depreciation.

The Commissioner: There are different factors entering into different classes of property. You cannot lump them together. There might be an insignificant depreciation in one and a great depreciation in another.

Mr. Miller: That might be so.

By the Commissioner:

Q. Isn't that true Mr. Reed? A. That is so.

Q. Depreciation varies very materially with different classes of property? A. Yes, sir. Let me give you an example to illustrate my understanding of what you are trying to arrive at. We will take the general office building. Now, if for some reason it should become necessary during the next year for the Edison Company, in order to comply with the requirement in the way of new records which might have to be kept, which would call for a large expansion in personnel, so that that office building would be absolutely unsuitable for use, obsolescence, from the standard of the Edison Company, would be entirely different a year from now than with their present requirements.

By Mr. Miller:

Q. Supposing there is no change in their necessities with respect to the office building, for example, would you say it had not depreciated to any appreciable extent? A. If all of the factors were equal, if maintenance and upkeep are the same then as they are now, and there was no evidence of physical deterioration over and above what we now encounter, it is probable that there would be no change that I would find in that building—

Harry A. Reed—For Respondent—Cross

Q. Let me see if I can state it more specifically so that I can get a definite answer. If there were no obsolescence in the course of a year, would you say that the property that you have depreciated had sustained no additional depreciation, would that be true? A. Not necessarily—

The Commissioner: I do not see how Mr. Reed can answer that without considerable qualification to his answer.

Mr. Miles: Counsel for the Commission is using the word obsolescence of being synonymous with depreciation.

The Witness: There are numerous causes recognized generally, I believe, that result in depreciation accruing in a property. Among those causes are obsolescence. We also have wear and tear, destruction due to overload, the action of public bodies, the question of adequacy and inadequacy and numerous other elements.

By the Commissioner:

Q. What do you mean by acts of public bodies? A. Sometimes a municipal ordinance will cause the widening of a street on which a sub-station may front, on the building line, and that may mean that that sub-station may have to be moved to another location. The building that would be thus vacated would suffer through the action of public bodies, and the only salvage might be in the brick walls.

By Mr. Miller:

Q. Would there be any way of relating the annual depreciation allowance to your allowance for accrued depreciation? A. No, sir.

Mr. Miller: I would like to defer any further cross-examination at this time.

Harry A. Reed—For Respondent—Cross

By Mr. Miles:

Q. Mr. Reed, do I understand that you are taking the position that obsolescence is the principal factor in the determination of the accrued depreciation that has been estimated, particularly with respect to all of these various accounts, regarding which you have testified? A. Generally speaking, obsolescence is the most important of the various factors.

Q. In these various accounts? A. Yes, sir.

Q. In addition to the degree of obsolescence you have also considered the factors enumerated in your last answer to Mr. Miller? A. Yes, sir.

Q. After considering all of these factors which you have enumerated you have arrived at your own estimates of accrued depreciation? A. Yes, sir.

Q. And have expressed them in percentages which differ with respect to the different properties or with respect to the different property accounts? A. Yes, sir.

Q. You have not attempted to adopt any specific form or rule of thumb? A. No, sir.

Q. You were not persuaded by Mr. Miller's theory of the straight line method?

• Mr. Miller: That is not my theory.

By Mr. Miles:

Q. You have not adhered to any straight line theory in estimating accrued depreciation? A. No, sir.

Q. Some questions were propounded by counsel as to your method of estimating labor costs by relating those costs in expressed percentages with the direct costs. Is that or not the usual way of making such an estimate in reproduction cost appraisals? A. It is very usual. As an illustration of that in our working papers there may be many quotations on the part of a manufacturer, in which it is stipulated the per cent. that

Arthur B. Favor—For Respondent—Direct

they would add to the cost of the material if they were asked to include erection.

Q. You were also asked certain questions by counsel for the Commission with respect to the inclusion of a contractor's profit, and the question was propounded to you once or twice as to whether you had included this in all structural accounts. As I understand it, the only place where such a profit has been included is in accounts relating to building structures? A. That is correct.

Q. That is also true with respect to any inclusion for estimating expense of owner's completion bond or architect's fees? A. Yes, sir.

Q. The only three items, therefore, where such inclusion is made relate to Account No. 207, structures in steam generating system, Account No. 240, transmission system structures, and Account No. 278, general office structures? A. Yes, sir, also Account No. 208 and 279, other general structures.

Q. Altogether there are five accounts or five instances where such inclusion has been embraced? A. I think that is correct.

ARTHUR B. FAVOR, having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Miles:

Q. Will you please state your full name and occupation?

A. Arthur B. Favor, electrical engineer, employed by Day & Zimmerman, Inc.

Q. Will you state briefly your experience with respect to engineering matters relating to electric utilities, and such experience as you may have had in construction work and along general utility lines? A. Since August 1933 I have been employed by Day & Zimmerman, Inc., in the making of inven-

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tories, pricing those inventories in connection with public utilities; also in making inspections of public utility properties—

Q. For the purpose of approval of S. E. C. bond applications in the Securities Exchange Commission? A. Yes, sir; the larger of these appraisals has been one for the Commonwealth Edison Company of Chicago, Illinois, and in connection with that appraisal I testified before the Illinois Commerce Commission. I also made one for the Western United Gas and Electric Company of Illinois, and one for the Philadelphia Electric Company property. In all of these assignments I was in charge of the sub-station and power house electrical equipment inventory and prices. More recently I have made an inventory and pricing of a property in Syracuse, New York. As to the S. E. C. approval, they involved the Northern New York utility properties, the New England Power properties, the Philadelphia Electric properties, the New York-Edison properties, the Brooklyn-Edison properties, and some others.

Q. With respect to matters before the Securities Exchange Commission, I take it you were assigned to certain phases incident to the preparation of a registration system? A. Yes, sir.

Q. With whom were you associated between 1921 and 1933? A. I was associated with the U. G. I. Contracting Company and its successor, the United Engineers and Constructors, Inc., as construction superintendent.

Q. In connection with your duties in that capacity did you supervise the construction of certain plants and properties in New York State and Pennsylvania, Illinois and other states?

A. Yes, sir.

Q. Give me a few of the generating stations and sub-stations under your supervision while with the U. G. I. Contracting Company and the United Engineers and Constructors, Inc.?

A. When with the U. G. I. Contracting Company I had charge of the plant at Camden, the Indiana Gas and Electric Company. Some of the larger items since then have been the power plant

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at Norristown, Pennsylvania, of which I was electrical superintendent.

Q. What is the capacity of that station? A. Forty-five thousand k v a, one of the ten sub-stations in that vicinity, ranging in capacity from six thousand to ninety thousand k v a, in all of which I was in full charge of construction.

Q. Prior to 1921 you were associated, I believe, with Stone & Webster for a period of time? A. Yes, sir.

Q. In what capacity? A. My assignment with Stone & Webster, as I remember, from 1916, with one or two gaps, up until 1921, and while with them I was electrical foreman on switch-board construction. That is the way I started with them. I finally wound up as electrical foreman, general electrical work.

Q. Mr. Favor, you have been charged with the preparation of the estimates of reproduction cost new and depreciated of the property of the respondent in this case, embraced within Account Numbers 212, 213, 241 and 274, have you not? A. Yes, sir.

Q. Well now, let us refer first to the most substantial of those four accounts, namely item No. 241, dealing with sub-station equipment, estimates for which are set forth in Respondent's Exhibit No. 2, beginning at page 71. Will you tell me first what method you adopted for supervising the inventory of the property embraced within this account? A. I personally made the inventory of all the property involved in this account. My method was to take a pad of paper into the sub-station and actually record the name plate data or sufficient engineering data necessary to accurately price the item. These items or units are listed in uniform order. For instance, I list the heavier equipment first, such as transformers. I will exhaust the transformers before going to another list of equipment. Units are taken up in that fashion until I have listed all of the major equipment in the sub-station.

Q. Having obtained all of the necessary information to put

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you in a position to price such equipment, what method did you then follow in collecting your data to support your estimates as to the unit costs of the property embraced within this account? A. The pricing as shown in Exhibit No. 2 is the total in place price for the units. Those in place prices are composed of three major parts, material, labor and the direct engineering supervision. The material part of the figure I obtained where possible from published lists and catalogues furnished by the manufacturer, with application of discounts which are enjoyed by the respondent. Where the items of equipment are not so listed, I have written to the manufacturer for a quotation, and to the quotations so received or the prices taken from catalogues I have made an allowance to cover the small miscellaneous items, such as bolts, nuts, tape, soldering and so forth, necessary to install electrical equipment, as well as an item to cover freight, where necessary. These three figures are added together and form a total of material price. I might say that the freight is necessary in a very few instances. Most of the electrical equipment is sold delivered. The next item of labor is developed by first applying the number of man hours which my experience has taught me to be necessary to install that piece of equipment, with an efficient crew. These man hours are then multiplied by a figure developed in this particular job, reflecting the rates per hour and working conditions, in order to give the dollars of labor. Those two figures, material and labor, are then added to give the total material plus labor figure. To this is added an amount to cover direct engineering supervision. This direct engineering and supervision in the case of Account No. 241 is applied to each item of equipment and is constant within one sub-station. It may vary in different sub-stations. In other words, I might apply twelve per cent. to one sub-station and another sub-station may have thirteen per cent.

Q. What is the explanation for such price variation? A.

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That is due to the fact that in the construction of this type there are certain sizes and designs of sub-stations which are more or less standard. Those will fall into the lower class, lower rates for direct engineering and supervision. The ones which are not quite so standard require more time for designing and more supervision possibly. If it is a small project this engineering supervision will be slightly top heavy. Possibly it will be a type of sub-station which it is impossible to get into reproduction in installing equipment, and there might not be very many units of the same type. Those things tend to increase or decrease the field supervision. This figure is varied in order to get an answer applicable to each sub-station. That is more nearly correct, than would otherwise be if I had used an average rate on every sub-station.

Q. In other words, you tried to relate the percentage to the particular character of sub-station that you were considering?

A. Yes, sir.

Q. Rather than take some weighted average of all of the sub-stations? A. Yes, sir.

Q. Mr. Favor, you have testified that you have made a great many construction estimates for companies with whom you have been associated in the past or by whom you have been specially employed. I would like to inquire whether the basis on which you have made your reproduction cost in this case is identical with the basis or method followed by you in making the construction estimates? A. Yes, sir. I have made the construction estimates in the same way and I have gone out and built the job and I find it is very satisfactory.

Q. Referring to account No. 274, beginning at page 239, "Other utilization equipment", what has been your method of approach to arrive at your estimates of the cost of material and labor embodied within that account? A. The account consists essentially of capacitor installations on customers' property, the exceptions being three buildings, two

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of them located in hotels, one in the General Supply Company property. The method is the same as I have outlined for the sub-stations because they are miniature sub-stations. Capaciter installations are practically all material items. In that case I have written for and received quotations on all of the electrical machinery, where they manufacture capacitors, and the remaining ones I obtained from published prices with discounts.

Q. As I understand you, with respect to these particular accounts your principal source of obtaining unit costs of material has come from the manufacturers of the materials themselves? A. Yes, sir.

Q. Then you have applied as a necessary part of the cost of installation the labor costs which from your experience would follow in connection with an installation of that character? A. Yes, sir.

Q. Including with labor costs an estimate for the necessary field supervision expenditure? A. Yes, sir, that is not in the labor cost.

Q. Am I right in assuming that the greater part of the labor involved in an installation of this character is skilled labor, or is it the sort of work that could be done by common labor? A. The work involved in these accounts must be done by skilled labor.

Q. Most of that labor would have to be imported by the respondent? A. Yes, sir.

Q. Do you know from your investigation of this case as to whether the respondent actually imported labor at the time it installed equipment of the character you are now discussing? A. Yes, sir. Most of its equipment was built by imported labor.

Q. The remaining accounts which you have supervised are Accounts Nos. 212 and 213? A. Yes, sir.

Q. Without burdening the record with too much detail, did

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you follow the same method in reaching your estimates with respect to the property in those two accounts as you did in the two regarding which you have testified? A. Yes, sir.

Q. That answer goes for both the material cost and the labor cost and the cost of installing of the equipment in place?

A. Yes, sir.

Q. Referring again to Account No. 241, sub-station equipment, will you state how you have arrived at your estimate of accrued depreciation, and especially tell us what factors you have considered in forming your judgment of that depreciation?

A. While visiting these sub-stations for the purpose of inventorying the equipment I also made notes of the type of construction, the design, the maintenance, the observable condition which indicates maintenance, and if there are operators at the station I inquire as to the load conditions at the time. At the time of this visit I form a judgment on the basis of one hundred per cent., as to what condition the equipment located there is in. Later on that judgment is checked, increased or lowered, by the results of my study of those stations for the past several years, and also by whatever I may find out through talking with the officials of the company as to their plans for continuance, increasing or abandoning such equipment. After weighing these items, I apply a final condition figure, which is a percentage based on one hundred, the difference between it and one hundred representing the accrued depreciation.

Q. Do you consider the age and prospective life of a particular unit of property, along with the other factors that you have enumerated? A. No, that has very little to do with it. I pay particular attention to the maintenance. Of course, it is understood if a great deal of this equipment is in operation, it has high voltage connected with, it is impractical to take a piece of equipment apart and examine it, and therefore I rely on the outward indications or appearances which my experience tells me would indicate whether that piece of equipment

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is well cared for, such as the degree of cleanliness, oil leaking around the transformers, all of which is an indication as to whether or not the management is taking good care of the equipment. In addition to making notes and a mental picture of the equipment I take photographs of all the points of interest within and without the sub-stations, which help me to recall later what I have recorded.

Q. You also give some thought to the question of obsolescence in making this estimate? A. Yes, sir, obsolescence has quite a bit to do with the figure which I finally put down, but I cannot say that obsolescence would be the major factor, as Mr. Reed has said because I find that a figure in a sub-station may include only two or three hundred items, and as to some of the items in the sub-station obsolescence may have some bearing, and on other items within the sub-station it would not have any bearing. Therefore, obsolescence is one of the factors in a sub-station which is taken into consideration, along with wear and tear, inadequacy or over-adequacy, and there are others.

Q. Referring to the four accounts with respect to which you have been testifying, will you give me the estimates of the reproduction cost new and depreciated for the property embraced within each of those four accounts, beginning with Account No. 212? A. Reproduction cost new is \$147,718; depreciated it is \$85,407.

Q. Account No. 213? A. Account 213, new it is \$277,508; depreciated it is \$180,380.

Q. Account No. 241 relating to sub-station equipment? A. Account No. 241 new is \$465,883; depreciated it is \$434,432.

Q. Account No. 274 relating to other utilization equipment? A. Account No. 274 new, \$34,359; depreciated \$26,529.

*Arthur B. Favor—For Respondent—Cross**Cross Examination.*

By Mr. Miller:

Q. What depreciation percentage did you apply in Account No. 212? A. In Account No. 212 I applied to the bulk of the equipment thirty-five per cent. depreciation. However, there is one item in that account, which is an engine driven generator which was separately depreciated, and this was because this engine is not being used, and I depreciated it to zero. The balance of the equipment of that account is depreciated thirty-five per cent. The depreciation for the account as a whole is approximately forty-two and two tenths per cent.

Q. As to Account No. 213 what was the depreciation percentage? A. Account No. 213, it is depreciated thirty-five per cent.

Q. Account No. 241? A. Account No. 241 was depreciated by stations, the weighted average for the account being seven per cent.

By Mr. Miles:

Q. But the percentage of depreciation for the various stations differed? A. Yes, sir.

By Mr. Miller:

Q. Take Account No. 274? A. That was depreciated by locations, the weighted depreciation for the Account being twenty-three per cent.

Q. Those percentage figures, I presume, would furnish no basis for a computation of the annual depreciation allowance? A. No, sir.

Mr. Miller: That is all at the present time.

Adjourned until to-morrow morning at 9:30 o'clock a.m.

Theodore E. Seelye—For Respondent—Direct

Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Pennsylvania, Thursday, February 18, 1937.

Commissioner STAHLNECKER, Presiding.

APPEARANCES:

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For the Public Service Commission

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For Edison Light and Power Company

T. E. SEELYE, recalled.

Direct Examination.

By Mr. Miles:

Q. Mr. Seelye, you have heretofore testified with respect to certain phases of your past experience incident to the operation of public utility companies. I should like to inquire at this time as to whether as a part of that past experience you have been Treasurer or otherwise charged with the accounting control of public utility companies? A. Yes, sir, I have been Treasurer of a number of public utility companies, and have been responsible for the accounting control and reports to the board.

Q. Now, Mr. Seelye, in Respondent's Exhibit No. 2 with respect to reproduction cost new undepreciated on this property are certain property accounts denominated as undistributed construction expenses, a summary of which appears in the

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exhibit, now, I refer you first to Account No. 200 entitled organization, for which you have included in your estimate of the reproduction cost new the sum of \$68,812.00, and ask you what items or increments of value are included in that account number?

A. The items which were included in that account number, organization, that is, 200, are set forth in the uniform classification of accounts of the Public Service Commission, and include the cost of preliminary work preparatory to the securing of charters, and includes expenses incident to securing certificate of convenience to serve the various territories which the company proposes to serve. I have not in considering that feature of it assumed that there would be any contest in connection with the securing of the certificate, I simply say expenses involved in doing that. It includes the cost of preparing information necessary to secure the initial financing of the company, which would include the cost of registration under the Securities and Exchange Commission. It includes bonus, fees and other expenses in connection with securing charters of the company, and such legal fees as are related to these matters. The item of Securities and Exchange Commission which I mentioned, I previously referred to the Commission's Uniform Classification of Accounts, the item of Securities and Exchange Commission is not included in the Uniform Classification of Accounts I think at any place at the present time, is only a new cost which has come into the cost of obtaining money only in the last year or two.

Q. Now, in other words, as I understand your reply, you have included within the purview of this item the expenses allocable under the accounting rules of the Commission, whether such expenses relating to the legal or engineering expenses, and you have also included all expenses incident to the compliance with state or federal laws and regulations? A. Yes, sir.

Q. Mr. Seelye, have you personally had any experience in connection with the operation and filing of registration statements with the Securities and Exchange Commission? A. Yes, sir. Day and Zimmerman have participated in a good many bonding operations on the part of utility and industrial companies. Our part in these matters being devoted to the en-

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gineering studies necessary to serve as answers to questions 5, 6 and 7 on the registration certificate which refer to the matters of description of the property, the business of the company and so forth, its earnings and other matters of that character. In connection with these matters we have conferred with counsel for the company, and with officers of the company that happened to be involved, and we are familiar in general with the costs which are incurred inasmuch as the costs are enumerated and stated on the certificates themselves by the law, I believe. I believe that many companies have expenses in connection with the registration under the Securities and Exchange Act which do not appear on the certificates because it is performed by members of the staff who may not charge their time, but of course, in connection with a company newly organized it would all have to be charged that way because there would be no other account to charge it to. The cost of this registration ranges from possibly a half percent to two and a half percent or more percent of the amount of the issue. The majority of those with which we have had anything to do seem to run in the neighborhood of one percent, they are mostly large issues, and a smaller percentage as the size of the issue goes up.

Q. It is a fact, is it not, that the form which must be filed with the Securities and Exchange Commission in order to register an issuance of bonds is precisely the same no matter what the principal amount involved of the issue happens to be? A. Yes, the same questions must be answered in any event and the responsibility of the officers of the company is not in proportion to the amount of money, it is the same in any case.

Q. Now, in arriving at your estimate of expenses attributable to this item, that is, the organization expense, have you assumed that the respondent would procure the necessary approval of this Commission or any other political subdivision of the state of Pennsylvania authorizing it to engage in its business without any contest? A. Yes, sir, I presumed that, and I think as I stated a few minutes ago, that the certificate of convenience would be obtained in an entirely routine way with-

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out contest. I don't think you can estimate in advance the possibility of a contest, or what it would cost, because there is no possible way to do that, so we cannot say that.

Q. Now, have you included within the item any expense incurred by the respondent in connection with negotiations for obtaining a franchise authority from the various political subdivisions served by it? A. No, sir.

Q. Has your investigation as to actual organization expense of the Edison Company disclosed that it did actually incur any such expense incident to the procurement of its franchise? A. I understand that there are instances indicated in the minutes of the company where expenses have been incurred in connection with the securing of franchises, but we have not made any allowance for that in here.

Q. Referring next, Mr. Seelye, to Account No. 288—

The Commissioner: Mr. Miles, in that Account No. 200, is there any tabulation of the figures which make up this \$668.12. There is not any other account here, as I understand it, but I don't see anything in this volume as to that.

By Mr. Miles:

Q. Have you any breakdown, Mr. Seelye, of the amount allocated to organization expense under reproduction cost new and depreciated? A. I have not. The figure which we have there is based on a percentage of the direct costs. We can, if the Commission desires, prepare some supporting data to show the basis of our judgment on that.

By the Commissioner:

Q. It is what percentage? A. It is one and a half percent of the direct costs.

Mr. Miller: I was going to cross examine Mr. Seelye in some detail on that.

(Further remarks by Mr. Miller at his request off the record.)

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The Witness: I was going to say that this information would not be in the form of an exhibit; it would be information to show the things which were considered in connection with the development of a judgment, because actually it would be too highly theoretical to set down any specific numbers because of the great many things which you have to consider in organization expense.

The Commissioner: I didn't mean that.

The Witness: Probably that would all total up far more than this.

By the Commissioner:

Q. I meant, to show how you arrive at the figure on which you take one and a half percent? A. Oh, yes, all right. I can produce that very quickly, sir.

By Mr. Miles: .

Q. The one and a half percent is shown in the direct cost shown on this Exhibit No. 2, is it not? A. That is right.

Q. Suppose we put it this way for the record: It is one and a half percent of the total made up of the accounts shown on page 1 of the exhibit beginning at 204 and ending at Account No. 286? A. That is right.

The Commissioner: That is what I wanted to know.

The Witness: In other words, applied against the sum of \$4,587,476.00.

By Mr. Miles:

Q. Referring next, Mr. Seelye, to Account No. 288, covering expenses incident to engineering, expenses during construction, will you state precisely what items of expense are in your opinion properly included within that account number? A. The item of engineering expenses during construction is the expense incurred by the owner, or by the company itself aside from the construction cost, for the cost of its engineers, engineering expense in the preliminary studies preparatory to the commence-

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ment of construction until the completion of the work, including general supervision and general coordination of the activities in the field.

Q. Now, what are some of those preliminary engineering matters that are involved in that expense, of course, of the particular company in question? A. Prior to the commencement of construction it must be obvious that it is necessary to decide what to build. In order to arrive at such a conclusion studies are necessary; studies of the territory to be served and so forth, population studies and so forth. Those studies should also include industrial studies to determine the requirements of the company from a capacity standpoint. There would also be studies for the determination of load centers in order to decide on the location of the main transmission lines and sub-stations and generation. There would be location sites for generating stations. Various problems might enter into that, such as water supply and other things; the availability of sites in connection with the necessity for locating them within the proper distance from the load or whatever the determinations from an engineering standpoint might require from the standpoint of location. There would also be an investigation to determine the desirability of the purchase of power, or the source of energy which might be purchased, and where this energy should be fed into the system if it is purchased. There would also be studies to determine the availability of sites for generating sub-stations. It is not possible to buy any site, or buy eminent domain right on the part of the company any place it choose, except possibly at time at an exorbitant cost you might find a situation which you don't have to condemn, if possible, unless there is something which requires, from the standpoint of the public, absolute necessity of acquiring the site by condemnation. There would be studies for the determination of capacities of plants and the load requirements. There would be a determination as to the type of the generating station; what units would be used, and other matters in relation to the general design of the station. The engineering staff of the company, the owner would at that time determine the type of de-

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sign for transmission or distribution system, overhead and underground, and cost estimates would have to be prepared for the purpose of permitting arrangements of financing. For the general arrangement on these general matters it would be necessary at the same time to make a recognizance of the service in the case of transmission lines and location surveys. These would not be the final locations for the poles as would be made by the construction organization, but it would be to determine the location of the line, so that the land department could acquire right of way if necessary, or the easements.

Q. Is it your opinion, Mr. Seelye, that these various necessary expenditures to which you have just referred and which embody the various items making up the total of Account No. 288 are actual expenditures, the outlay of which is incurred in cash, by companies organized to engage in business similar to the respondent? A. Yes, sir, all of these expenses are outlay of cash. After a property is constructed and in service there are a good many costs which are incurred which never can be seen again. For instance, if you have a brick building you can never see the labor in it, or the scaffolding, or the equipment which erected it, and just the same even if you took the building down you could not find anything for it, but it is there, actually those costs are there. They are required to construct the plant, but you have no evidence of them after the work is completed.

Q. Now, counsel for the Commission at various stages of this case has interrogated witnesses for the respondent with respect to the expenditures included in field supervision and expenses in the direct property account. I should like to inquire whether any of the expenses allocable to such field supervision and expenses have been included in any way within your estimates of engineering, superintendence and construction in Account No. 288? A. No, they have not. Let me express it this way: In setting up this reproduction cost we have assumed that the company would set up a construction organization instead of letting the work by contract. In other words, it would do the work itself. If we turned this work over to a construction company, the type of which exists in a good many instances who

will undertake to do the detailed engineering and construction, that is the type of construction organization that would be best suited to do this sort of work. They would receive from the Chief Engineer's office, whatever his title may be, instructions with respect to what he wants to build. He desires to build a generation station on Pershing Street of such and such a capacity; boilers of such and such a capacity, whatever electrical characteristics might be desired in connection with the design of the station. That is what they could expect in somewhat more detail than I have recited, and they proceed to make the detailed drawings and prepare to construct. The biggest job of engineering is not the pencil and paper job of making the design for the anchor bolts, for the turbine, it is to decide what kind of turbine to buy, and that is the job which is done by the Chief Engineer or the owner who decides what he wishes to build, which is the perfectly logical thing for him to do in any event and the construction organization proceeds to make the detailed design for it and to build it. I am discussing that at some length because of the fact that it is the soundest approach. We could, as is done in many instances, take these field expenses and increase our unit cost by that amount, and never mention them again. We prefer to show everybody what we put in, and it does occasion discussion at times, but we think it is the right way to do it, and that is exactly what would be done if this company set up its engineering organization and its other staff in the headquarters of the company and let the contract to some good construction organization. That is just what will be charged to the costs which we enumerate field, office and construction, are the things which would be borne by the construction company and not by the electric company itself, and it would be paid for by them as part of the bricks, wire and poles that went into the system.

Q. Various costs embodied in engineering expense during construction is the company's cost over and above that of the contractor? A. Over and above the contractor, that is right.

Q. Now, without repeating again what has definitely been stated by one or two witnesses, but because it is relevant to this

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discussion, isn't it a fact that the only profit for a contractor included anywhere in expenses in Exhibit No. 2 is in connection with the erection of building structures? A. Yes, that is right. The reason for that is that normal procedure in constructing this property would be to sublet the building construction, the general contractor undertaking this construction of this building would sublet a large part of the work to sub-contractors, and that is what would be done in an instance of this character. It is a specialized line of work which requires specialized trades, and the proper type of sub-contractor could do it right and cheaply.

Q. Of course, no part of that is involved in Account 288? A. No.

Q. I refer to Account No. 289, which is known as general officers' and clerks' salaries during construction. Please state precisely what character of expenses are included within that item? A. During the course of construction which includes a period sometimes prior to the actual beginning of construction until it is completed the company is a corporation with corporate requirements as well as the job and duty of administering the expenditure of about \$5,000,000.00, more or less, for the actual construction of the property. This organization is charged with the responsibility for financing the project as it goes along. It is charged with the responsibility for company records, and generally speaking, for supervision from an administrative standpoint only of the expenditure of about \$5,000,000.00 or more. The amount which we have shown here of approximately \$45,875.00, or approximately \$23,000.00 a year seems modest enough for the staff which would be required in connection with the expenditure of this amount of money.

Q. Now, Account No. 290 has to do with the general officers' and clerks' expenses during construction. What is the distinction between that and Account No. 289 which you have just mentioned, relating to general officers' and clerks' salaries during construction? A. Well, that includes the rental of offices and expenses of that character and expenses incurred, traveling expenses, if any, transportation expenses of various kinds.

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Q. Account 291 relates to office supplies and expenses during construction? A. Yes, sir.

Q. Will you tell us what you have included as properly allocable to that item? A. That includes telephone, telegraph expenses, stationery, matters of that character. It is a small item.

Q. Mr. Seelye, the propriety of an inclusion of something for all of these various overhead accounts is recognized in the Commission's Uniform System of Accounting, is it not? I am not suggesting now that they are committed to any specific sums, for any one or more of the items, but is it not a fact that their system of accounts recognizes expenses of this character? A. Well, yes.

The Commissioner: If that were not so there would be no account number.

The Witness: That is exactly right, my answer.

Mr. Miles: That is true, Your Honor, but sometimes that policy circulates the fact that it is a way of abating property values.

The Commissioner: The only question that there can be as to these items is as to the question of percentage.

Mr. Miles: That is precisely what we were trying to develop.

By Mr. Miles:

Q. Now, referring to Account 292, relating to law expenditures during construction, what is embodied within that item?

A. That account is to cover the legal expenses during the period of construction. It does not include legal expenses having to do with the organization of the company, but it relates to such expenses as might be brought about by the review of contracts and other matters of that sort, for purchase of materials. In the expenditure of that much money it seems inevitable, and I think from my experience I know that it is inevitable that during that period there will be some litigation. We cannot tell in advance what it may be, but experience indicates that it amounts

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to something during the course of construction. If we knew before hand what the litigation would be we would immediately take steps to prevent it from happening, so we cannot describe very accurately what amounts, or what thing might cause expenditure, but we know there is a legal expense during the course of construction, or the expenditure of that much money over a two year period.

Q. Mr. Seelye, passing next to Account No. 293; what character of expense is included within that item called injuries and damages during construction? A. Our principal costs include compensation insurance, property liability insurance. This item, however, is to cover costs which may be beyond the insurance coverage. It covers suits for damages to abutting property which might be caused by construction which is not covered by public liability. For example, property damage due to the introduction of a generating station or a transmission line; nuisance damages and other things of that character during the course of construction. A construction work which is spread over as wide an area as this is, and comes in contact with so many thousands of the public, must necessarily become involved from time to time in minor litigation.

Q. Well, expressed in a sentence, it is expenses that would be incurred in the payment of claims resulting from personal injuries or property damages, not included within the coverage of insurance policies. The next account number is 294, relating to insurance during construction. Will you state what is embodied within that item? A. That includes insurance paid by the owner for fire insurance, public liability insurance in connection with the company's own staff, as well as compensation insurance.

Q. That comprises the insurance premiums required during the period of construction? A. Yes, that is right.

Q. Now, I think it is perfectly appropriate to inquire at this time as to what period of construction you have assumed in your reproduction cost estimate? A. That is a two year construction period.

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Q. So that this insurance, for instance, would be probably the amount of insurance over a period of two years? A. That is right.

Q. We start out at some sum and increase as the investment increases? A. Yes, sir.

Q. Now, the next account, Mr. Seelye, included in these overheads is Account No. 295, relating to taxes during construction. Will you state just what taxes would necessarily have to be paid during that period? A. That would be a certain amount of real estate taxes prior to dedication to public service. The acquisition of real estate would have to be made some time prior to its use; sometime prior even to the beginning of construction. That is one item of taxes that would be during the time of the company's construction period, capital stock tax. There would be likewise the old-age pension tax and the social security tax which we have not included in the direct cost of construction on the organization which would be engaged in constructing the property.

Q. So that the taxes are made up of the nine mill tax payable to the state of Pennsylvania in connection with unemployment insurance, the social security tax resulting from the application of the federal law, the capital stock tax and the normal real estate tax? A. That is right.

Q. Now, referring next to Account 296, you have included under reproduction cost new for this account covering interest during construction the sum of \$305,526.00, and it is substantially the largest of all of the items in the overheads. Will you state how you arrived at that estimate for this item? A. The basis of a two year construction program, and with interest at six percent on money borrowed for the purpose of construction, the interest during construction over the two year period at the average rate of six percent would be six percent on the total amount, and we apply that to the direct costs, to the overhead accounts except Account 296, interest during construction, or a total amount of \$305,526.00.

Q. In other words, that percentage of six percent is applied against the aggregate on the reproduction cost estimate em-

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bracing the property within Accounts 200 to 295 inclusive?

A. That is right.

By the Commissioner:

Q. Six percent of the total amount for one year? A. That is for a two year construction period, that is an average.

Q. Six percent for one year on the total amount? A. That is right.

Q. Or an average of three percent per year on the cost of construction, that balances it out? A. That is right, yes.

By Mr. Miles:

Q. Mr. Seelye, we have covered all the general overheads enumerated in this summary of Respondent's Exhibit No. 2, relating to undistributed expenditures except the item which you have listed thereon, commonly known as cost of financing. I think you have previously testified with respect to your experience in connection with the construction and management of public utilities engaged in the generation and sale of electric energy. I should like to inquire whether you have formed any opinion as to the amount of expenses that would be incurred in connection with the cost of financing, of the amount that should be properly included in the company's—in any estimate of the reproduction cost of the property of the company? A. We have made a determination of the cost of financing. In our judgment it is five and a half percent of the total reproduction cost of the property of the company. This includes the cost of financing, not only for the bonds, but for other securities which might be issued. This company has at present approximately \$1,000,000.00 of notes which they have deposited as collateral under the York Railways mortgage, and the balance of its capital is in common stock. The company's cost of financing bonds should be less than the cost of financing common stock. In connection with my experience in recent years I think that five and a half percent is a reasonable amount to allow for cost of financing involving all of the capital requirements of the company.

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Q. Just what is included within that item? A. Preliminary expense involved is represented by the company's actual experience in connection with the certification of the issues, the mechanical expenses of preparing the securities. The largest item of expense would be perhaps the discount rather than the expense, depending upon the circumstances at the time the mortgage was issued. I mean the issue was marketed, this company I feel satisfied would have to pay a discount on all of its capital, probably of not less than three or three and a half percent. I refer now not bonds, but to all of its capital which it must raise. In other words, it would probably pay less on its bonds and more on its stock issues.

Q. In other words, that is the average discount? A. That is the average discount. I have made studies in connection with members of our staff and at various times, we have made a good many studies of the cost of financing various companies, and they range over a very wide range. We find that seven percent is a very common result when we can make an historic study of the cost of financing, and in many instances it is not possible to determine historically what the cost of money was to the company.

By the Commissioner:

Q. The cost of financing normally on the average is greater in proportion for small companies than for large companies, isn't it? A. Yes, sir, it is.

Q. Assuming that they are both sound? A. That is so.

By Mr. Miles:

Q. In other words, there is not as much market information, so to speak, on the securities of smaller companies, isn't that a fact? A. That is right. The amount of the security and the breadth of the market and breadth of distribution is less than for large companies.

Q. And the liquidity of the security is more? A. Many banking houses refuse to accept an issue under a certain size, not

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because of lack of soundness, but because the public will not buy it, because they have no ready market for it.

Q. My recollection is in a merger case involving the respondent and the York Railways Company which was heard by this Commission in 1935 your organization prepared an exhibit in which the cost of the financing of the respondent in that case and in this case was there estimated at seven and a half percent, which is two percent more than you are now suggesting for inclusion. Will you state why you now propose a lesser cost of financing by the respondent than you advocated in 1935 in the merger case? A. Primarily the reports submitted in the merger case were for the purpose of determining the relative values or relative costs to reproduce the properties of four separate companies for the purpose of merger. It was not a determination on a rate basis, and the cost of financing it will be noted in that report is the same for all of the four companies included in the report. In this report which we have submitted here we have included no cost of financing for the Railways Company or the Bus Company.

Q. Now, were there not only two companies involved in that 1935 cost, that is the Railways and Electric Company? A. And the Electric Company, but the Railways Company operates and directly owns a Bus Company, so that it is the same company. We have eliminated the cost of financing in our report here as of this date of the Railways Company and the Bus Company. Those two companies are neither of them earning a return of any kind. In other words, they are running in the red, they are losing money in operation and obviously under the circumstances a judgment as to the cost of financing the property would be meaningless. You would not be able to finance it all, so we have omitted that from the Railways Company, and we have included in the Electric Company and in the Steam Heat Company, both of which are earning a net revenue, an allowance of five and a half percent cost financing.

Q. Now, isn't it a fact that the cost of money is substantially less now than it was in 1935? A. The cost of money is much less than it was in 1935.

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Q. Is it reasonable to assume, in other words, that there would be the same figures on the cost to the respondent of financing now and what would have been the situation in 1935?

A. Yes.

By the Commissioner:

Q. The cost of financing indicated here is the cost of financing the property of the Edison Light and Power Company only?

A. That is correct.

The Commissioner: We are dealing now only with the one company.

By Mr. Miles:

Q. I wanted to confine it to the Edison Light and Power Company at the moment? A. The cost of money is less now than it was in 1935.

Q. Mr. Seelye, what observations have you made with respect to the depreciation that has been charged against your estimates of the reproduction cost new under undistributed construction expenditures? A. We have determined from the depreciation set up under each account of a direct cost the weighted average as applying to the direct cost of the entire property, we have depreciated the overhead accounts of indirect costs, Accounts 288 to 296, and included the cost of financing in the same percentage as that which was applied to the direct cost of the physical property. Organization expense has been likewise depreciated—I don't think it should be, that is a mistake—it is an immaterial amount so we won't bother with it.

By the Commissioner:

Q. Is the percentage the same on the depreciation there on indirect costs, is the same weighted average used? A. The weighted average is applied to the whole of Accounts 204 to 286.

By Mr. Miles:

Q. Now, for the purpose of the record, Mr. Seelye, will you state the reproduction cost new and the reproduction cost new

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less accrued depreciation, included on Respondent's Exhibit No. 2 for each one of the accounts with respect to which you have been testifying. First Account No. 200 entitled organization? A. Account No. 200, organization reproduction cost new \$68,-, 812.00.

By the Commissioner:

Q. Depreciated? A. Depreciated \$60,364.00.

Account 288, engineering expense during construction \$206,- 436.00 new and \$181,093.00 depreciated.

Account 289, general officers' and clerks' salaries during construction \$45,875.00 new and \$40,243.00 depreciated.

Account 290, general officers' and clerks' expenses during construction \$34,406.00 new and \$30,182.00 depreciated.

Account No. 291, office supplies and expenses during construction \$11,469.00 new and \$10,061.00 depreciated.

Law expenditures during construction \$22,937.00 new and \$20,121.00 depreciated.

Account No. 293, injuries and damages during construction \$45,875.00 new and \$40,243.00 depreciated.

Account No. 294, insurance during construction \$22,938.00 new and \$20,122.00 depreciated.

Account No. 295, taxes during construction \$45,875.00 new and \$40,243.00 depreciated.

Account No. 296, interest during construction \$305,526.00 new and \$268,018.00 depreciated.

Discount and expenses, cost of financing, \$296,869.00 new and \$260,424.00 depreciated.

Q. Mr. Seelye, Mr. Bierman, a witness for the Commission, has testified that in his opinion certain of the overheads suggested by Day and Zimmerman in the 1935 merger case should be reduced in arriving at the reproduction cost new of the property. Now, in connection with my questions it is necessary for me to make the record clearer by stating that Mr. Bierman for the purposes of his testimony in this case and the reproduction cost new stated that the reproduction cost estimate of Day and Zimmerman in 1935 allows—

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Mr. Miller: 1934.

By Mr. Miles:

Q. 1934, allows certain deductions from their properties by Mr. Palmer in connection with the generating facilities, and allows a further reduction which he thought should be made in these overheads. I should like to inquire whether you have any observation with respect to Mr. Bierman's testimony as to the proposed reduction of these general overheads? A. Mr. Miles, I don't like to comment on Mr. Bierman's testimony. I think that the method of setting these up by accounts is clearer,—it is clear to me. I know the method which he has followed is one which we in the past followed ourselves in setting that up, it was something that came with the business years ago and was followed until recently more or less. I think by setting it up by accounts you have a truer picture of the division of these things than you would have by setting them up in two or three different items.

Q. So that the record may be clear, do I understand that Mr. Bierman combines all of these general overheads in some three or four items? A. Yes, sir, that is right.

Q. And didn't allocate them or divide them to property accounts? A. That is correct.

Q. So that the overheads with respect to which he testified were not distributed between the account numbers prescribed by the Commission in its regulations? A. Generally they are not comparable with the figures in this report.

Q. Is it possible or practical to make a comparison between the overheads as offered by Mr. Bierman and those set forth here in Respondent's Exhibit No. 2? A. No, sir, I don't think so.

Q. Mr. Seelye, by way of concluding your testimony will you state for the purpose of the record the total reproduction cost new of the property of the respondent as shown on this Exhibit No. 2 exclusive of working capital and going concern value? A. The total reproduction cost of the physical property of the Edison Light and Power Company on prices as of about No-

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vember 30, 1936 was \$5,694,494.00 new and less accrued depreciation \$4,995,406.00.

(Remarks by Mr. Miles at his request off the record.)

By Mr. Miles:

Q. Now, Mr. Seelye, in Account No. 200 in Respondent's Exhibit No. 2, which is organization expense and constituting one of the general overheads with respect to which you have been testifying, accrued depreciation has been charged against reproduction cost allocable to that item, and I should like to inquire whether that was an inadvertent error? A. It was.

Q. You desire to have it understood, therefore, that the company can later substitute Sheet 1 of this exhibit for the Sheet 1 that is now contained in the exhibit, said substitution to be exactly as this page except that the cost as shown opposite Account No. 200 will be shown at \$68,812.00 reproduction cost new without any accrued depreciation, and the totals at the bottom of the page of reproduction cost new less depreciation will be adjusted accordingly? A. That is right.

Mr. Miles: Your Honor, we ask leave to be permitted to do that.

The Commissioner: Very well, that may be done.

Mr. Miller: We have no objection. We think it should be done.

Mr. Miles: We cannot do it during the day, these are photostatic copies.

By the Commissioner:

Q. What it amounts to is the cost less accrued depreciation would be increased about \$8,450.00? A. That is right, yes.

Q. Mr. Seelye, if my arithmetic is right, on your reproduction cost new, your indirect costs, the total of your indirect costs is about, as I gather it, twenty-two percent of the direct cost? A. Including the cost of financing?

Q. Yes, including all the items undistributed? A. The item of the total indirect cost is \$907,018.00.

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Q. That is a little better than twenty-two percent of the direct cost. I am not saying that that is the proper way to get at it, but that is about what it appears to me to be there, is that correct? A. That is correct, sir.

By Mr. Miles:

Q. But the figure which the Commissioner has just used as a percentage includes the cost of financing, doesn't it?

The Commissioner: Oh, quite.

The Witness: That is right.

Cross Examination.

By Mr. Miller:

Q. Mr. Seelye, you said that you have recently revised your setup of these indirect costs. When did your organization begin to use the setup which you have used in Respondent's Exhibit No. 2? A. We first used that in a report prepared in December of 1933 in connection with a rate case before the Illinois Commission. We prepared that, of course, not in that form, but according to the Illinois Commission's classification. In 1934 while that work was still in progress in Chicago the report in the merger case was gotten up by an entirely different group of men and for that reason they didn't follow the same thing which we have subsequently followed in all of our reports.

Q. Well, at the present time as I understand it you use the classification of accounts of whatever regulatory body your organization is appearing before? A. That is right, yes.

Q. And in no case, or in very few cases, I assume, would these setups be comparable with each other? A. No, in some—a good many of the Commissions use the same classification. That is to say, I think the Maryland Commission's classifications numbers; the New York Commission and the Illinois Commission are the same—

Q. It depends? A. It depends on the Commission. In other words, appearing before a particular Commission we feel it is better to set it up according to their particular classification

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than to adopt one of our own which we might attempt to make standard for all the Commissions where we appear, and it is just as well to make these studies in connection with these particular Commissions' accounting procedure, rather than to assume to use some other one.

Q. You would not say that the setup used in your 1934 report was wrong, would you? A. The setup, I don't say that it is wrong, no. We adopted that form I think probably—I don't know whether anybody else used this method of setting it up by classification, perhaps they did, but we did it because we think it is more representative and more clearly defined than a mere statement of administration and taxes, because under this system we put ourselves in accordance with the complete definition of the account as set forth in the classification, and we think that is more informative generally. Where we vary in any way from the classification we attempt to explain it either by testimony or in some paragraph that we set up for the purpose of its exposition.

Q. However, the method of setting forth the indirect costs used by Mr. Bierman is a generally accepted method among engineers? A. It has been used for a great many years.

Q. Now, take Account No. 288, what percentage figure did you use, or did you apply rather to the direct costs to obtain the \$206,436.00 figure for engineering and expenses during construction? A. Four and a half percent.

Q. And what depreciation percentage did you use to reduce the amount of that to \$181,093.00 depreciated? A. I will have to compute that for you, Mr. Miller.

(Remarks by Mr. Miller at his request off the record.)

Mr. Miles: I would like to have, if your Honor please, a statement of the percentages by which each one of these items has been depreciated.

Mr. Miller: Yes, I was going right down the line to get the percentage of all to determine the new figure, and the percentage of depreciation applied.

The Witness: All right, we will get that for you.

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The Commissioner: You are entirely satisfied to have that done?

(Remarks by Mr. Miller at his request off the record.)

The Witness: It is about eleven-percent roughly for the whole thing.

By Mr. Miller:

Q. Is the Edison Light and Power Company registered with the Securities and Exchange Commission? A. No, I don't think it is.

Mr. Miles: I don't understand your question.

Mr. Keesey: No company is registered with the Securities and Exchange Commission.

Mr. Miller: Well, it registers stock issues.

The Commissioner: It has not issued any securities since the Securities and Exchange Commission was created, therefore, it has not been before it.

Mr. Keesey: That is correct.

Mr. Miller: That is what I wanted to develop.

By Mr. Miller:

Q. Mr. Seelye, have you made any investigation to determine the actual experience of the respondent company in obtaining money? A. We have been attempting to, but we have not succeeded in developing a satisfactory result from the information which is available. We may be able later if we can find sufficient data to present an exhibit showing the actual cost of money to this company.

Q. You would think that would be a relevant matter in determining the cost of financing? A. Well, I think it would not be a relative matter in connection with determining the cost of financing today.

By the Commissioner:

Q. You say it would or would not? A. It would not.

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The Commissioner: I quite agree with you.

The Witness: But I think it would be relevant maybe in connection with the original cost of the property.

By Mr. Miller:

Q. Now, in your cost of financing item you state discount and expenses (cost of financing). Is that discount as stated?

A. Discount is—I may say that that total is used because of the fact, under the classification of accounts for deductions from income there is an item of discount and expenses which defines that average reserve may be set up and amortized over a period of years. We have described this as discount and expenses in here, and we explain it parenthetically as cost of financing for the purpose of tying it in with the classification only. Discount is discount which bankers would exact for the cost to reimburse them for their expenses and profit in connection with handling the issue.

Q. Is that usually referred to as discount or as commission, Mr. Seeley? A. The discount is usually regarded as the amount below par for which the securities are sold.

By the Commissioner:

Q. It is the difference between the amount or rate at which the security is offered to the public and the rate which the bankers pay for it from the company, is that correct? A. That is true too.

Q. And it is commonly called discount? A. Yes.

By Mr. Miller:

Q. Is that the sense in which you use the word discount here? A. That is right, sir.

Q. And what percentage did you use for that discount? Can you divide, in other words, your cost of financing? A. That estimate of five and a half percent for cost of financing is an estimate for the cost of financing for discount and expenses for all of the securities of the company, whatever form they might be in. It must be assumed that under the most favorable con-

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dition this company, if it was soundly financed, would have a bonded ratio of probably not to exceed sixty percent, and possibly less. As it happens the actual conditions are that it has no bonds outstanding, but about a million dollars of notes which could probably be funded. In fact from a soundness standpoint they undoubtedly could be funded.

Q. You mean funded as bonds? A. Yes, as bonds. The balance of the capital of the company is in the form of common stock. Common stock normally requires a higher discount in percentage than first class first mortgage bonds do.

Q. When you say discount now, do you mean brokerage commission? A. Brokerage commission, yes.

Mr. Miller: That is all I have at the present time, Mr. Commissioner. I would like to ask Mr. Seelye a few other questions a little later.

The Commissioner: We will take a recess for five minutes.

AFTER RECESS.

T. E. SEELYE, recalled.

Cross Examination.

By Mr. Miller:

Q. Can you break down Account No. 200, Mr. Seelye, to show me what you placed in that account as the ordinary cost of obtaining a certificate of public convenience? A. To include the cost—

Q. To show that cost I understand you include other things in that account? A. That is right, yes. Would you like to have a breakdown?

Q. I would like to have a breakdown for your figures for that account? A. I wish to say about these overhead accounts that the data which we can prepare for you, which I can let you have, to show a breakdown for this would not be a group

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of figures which would total \$68,000.00. In other words, it would be the data on which a judgment was based in arriving at the amount which is in this report, and I can say that having participated in organizations and in new company business on a number of occasions that the amount of money provided by estimate in advance for the company's costs in these connections is invariably much too low, and I don't believe that an estimate can be prepared in advance which would come out to the end, with the period after it, as the accurate result which you anticipate. My experience as I said is that they are almost invariably too low, and in many meetings in which I have sat, after giving a statement as to what the cost would be in connection with getting business started, the financial men have said let us double that, because they know perfectly well that it costs always more than you figure.

By the Commissioner:

Q. At least you can tell us how you arrived at the figure of \$68,812.00? A. Exactly. I wanted to make it clear that this is not a summation of a lot of dollars which comes out to \$68,000.00.

Mr. Miles: By the same token can we ask that Mr. Bierman prepare a similar statement showing how he arrives at his estimates of overheads.

Mr. Miller: Well, I thought that Mr. Bierman's cross examination covered that, Mr. Miles, but I see no objection.

Mr. Miles: I make the former request then, if I can, Your Honor, that Mr. Bierman supply us with a similar statement.

The Commissioner: Well, I see no reason why Mr. Bierman should not also show in this record how he arrived at his calculations, whether it is by percentage or some other method as to indirect cost.

Mr. Miller: Mr. Bierman informs me that he applied the percentages which in his judgment would give a proper figure.

Colloquy

The Commissioner: Then he can state what those percentages were.

Mr. Miller: They have been indicated in the exhibit, Mr. Commissioner, that we introduced in evidence.

Mr. Miles: I don't understand that, Mr. Miller. As I understand Mr. Bierman's testimony he merely adopted the overheads of Day and Zimmerman in 1934 in the merger case and said, "In my opinion they are X per cent, but I——"

Mr. Miller: That is correct, Mr. Miles.

Mr. Miles: But I am asking you that Mr. Bierman furnish us exactly what you are asking that Mr. Seelye furnish you, namely, a statement of how he arrived at these percentages of the items that he included within it.

Mr. Miller: That is all in his testimony, Mr. Miles.

Mr. Miles: I am not debating with you.

The Commissioner: Can't we solve this by discussion off the record between Mr. Miller and Mr. Miles?

Mr. Miles: All right, sir.

The Commissioner: Anything that you want, Mr. Miles, that is pertinent as to how the Commission arrived at any figures that they offered in the testimony I shall see that you get.

Mr. Miles: Suppose Mr. Miller and I talk about it.

The Commissioner: I suppose Mr. Miller has no objection to that.

Mr. Miles: Now, if Your Honor please, before proceeding further with the respondent's case, Your Honor will observe that respondent Exhibit No. 2, which is the exhibit on the subject of the reproduction cost with respect to which all of the witnesses yesterday and today have been testifying, is made up in four parts. One part dealing with the reproduction cost of the respondent's property; the second part dealing with the reproduction cost of the York Railways Company property; another part dealing with the reproduction cost of the York Steam Heat Company's property, and a page or two at

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the back dealing with the reproduction cost of the York Bus Company's property.

I should like at this time, with the permission of the Commission to put on the stand a Mr. Braden, who is associated with the staff of Day and Zimmerman, and without going into any detail with respect to the other reproduction costs, merely have him testify very generally first, as to his qualifications, second that he did supervise the preparation of that part of the exhibit, and generally what his approach to it was. Now, it will not be my purpose to break that testimony down into accounting principles to the extent of perhaps more than ten minutes.

The Commissioner: But you propose to give the total round figure?

Mr. Miles: That is right, sir.

Mr. Miller: You mean as to the Bus Company and the Steam Heat Company and the Railways?

Mr. Miles: Yes.

Mr. Miller: I object to that, Mr. Commissioner. I don't think that is relevant in this proceeding.

The Commissioner: Mr. Miles, I would like to state what I understand was the position you took when you opened yesterday morning as to your approach to this whole picture.

I understand that with the exception of the property that was indicated in certain questions you asked yesterday, namely, property of the York Railways that is used by Edison Light and Power Company in whole or in part, to deliver what it furnishes, namely, electricity to customers other than York Railways, you don't contend that any of the property of York Railways, the Bus Company or the Steam Heating Company should be included in the rate base on which a return is to be allowed, is that correct?

Mr. Miles: Our position is that only the property owned by the respondent and used and useful by it in

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the rendition of electric service should be included in its rates.

The Commissioner: But that for the reasons you stated yesterday, and the circumstances surrounding the picture, Edison Light and Power Company should be allowed by this Commission to earn seven and a half percent rather than six percent, is that correct?

Mr. Miles: May I answer that not quite that categorically.

We think they should be allowed to earn a rate of return which added to the other moneys in this group will permit a continuance of the various services rendered by these four affiliates and at rates which are not burdensome to the electric consumers.

The Commissioner: You did say that the minimum under all circumstances for this company would be seven and a half percent of its fair valuation.

Mr. Miles: I said then, and I say now, that the accounting estimates and investigations that we have made indicate to us that to permit that to follow would require a rate of return of approximately seven and a half percent.

The Commissioner: Now, if that is so, then I don't follow how it is pertinent to this case to develop the valuation of York Railways, York Bus and the Steam Heating Company in this proceeding. It seems to me even under your theory, you would be required to show, if your theory was accepted as being the correct one, what proper burden there is on the Edison Light and Power Company or its earnings in relation to these other companies, or obligation, or whatever you choose to call it, rather than the valuation of these companies. It does not seem to me that the valuation proves anything as related to the burden or obligation, if there is one, on the Edison Light and Power Company in relation to these other companies.

Mr. Miles: If Your Honor will permit I will try to be very brief—

The Commissioner: Certainly.

Colloquy

Mr. Miles: Here is our position and what we understand, and I will read the authority upon which I make that statement.

What we understand to be not only the expressed law of Pennsylvania, but the law which has been similarly laid down in other jurisdictions, is this: Here is a company, the respondent, which is one of four affiliates commonly owned, commonly officered, commonly managed companies, so tied together that all of the stock and outstanding notes of this respondent are pledged under an indenture to secure six million dollars of bonds of its parent, York Railways, and under which is likewise pledged stock of another affiliate of the respondent, to wit, York Steam Heating Company. Now, those four companies render a different service in the same city, generally speaking, to different people, a different character of service, but within the same general territory and political confines. It happens that the six million dollars of bonds of the parent company mature within nine or ten months; and it happens that the Railways Company is not making operating expenses; it happens, perfectly frankly, that the respondent is making over six percent on what we regard as a fair value of its property.

The Commissioner: In either case we agree that as to the Edison property it is earning more than six percent.

Mr. Miles: There is no dispute about that.

The Commissioner: Of course, there is not.

Mr. Miles: Under the foreclosure of the mortgage of the Railways Company, if that happens, and we have evidence which we want to get in at the proper time to show that that is very imminent, then in the absence of some relief, such as we propose in this case, in the event of the foreclosure of that mortgage it is to be assumed there would be a cessation of the operation of that Railway Company. There would be presumably a break-down, a split-up of these various companies, or of the stock of this company affiliated under that Railway mortgage, and

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would presumably be under the hammer or whatever action the bondholders see fit to take, because they own the stock of this company today, and because it is pledged to secure the bonds issued under that mortgage, which is also a direct lien on the property of the Railways itself.

Now, we therefore, ask what? We ask that the Commission not express any opinion of public policy that a rate of return in other cases should be six and a half percent or seven or seven and a half. We say to the Commission that this is an extraordinary and unusual set of facts. Here we have these four companies, tied in together. There is not the remotest doubt on the face of the earth that the Edison Company derives substantial benefits from its affiliation with these other companies. Hence it follows that the benefits which that company derives are benefits which are ultimately to the interest and to the benefit of the consumers of the respondent.

Now, we can show that, Mr. Commissioner; we can show it clearly that this company makes a profit on the sale of its steam, on the sale of its electric energy to the Railway Company. We think we can show you beyond any reasonable doubt that it saves an appreciable amount of money in its annual operating expenses. We think we can likewise show that it would have to make a substantial capital expenditure to build or replace the property and facilities of the Railways Company which it is now using in the benefit of the electric customers.

Now, I mention these things because to me the legal proposition which we suggest in this case is only sound if we can show two things will result from what we ask. If we can show, first, that a continuance of the present inter corporate relationship is to the direct benefit of the Electric Company itself and its consumers, and secondly, if we can add to that that the public interest, treated as whole, is benefited if this same inter corporate affiliation and relationship can be continued, and that thereby service rendered by each of these four companies can be continued.

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Now, that I say is our proposition. Now, we come to the question of value, and I want to be perfectly candid with Your Honor in arguing this point, and you might say, and I think with a great deal of logic—and when I say you, I mean that impersonally—with a great deal of logic even if your position is sound you don't care what the value of these affiliates is, you have no interest in the value of these properties, providing you show that there is not enough money coming in from these properties to permit them to continue, and if you further show that you have some plan that will permit their continuance reasonably, properly and legally approved by the Commission, that you have a sufficient amount of revenue to carry out that plan. Now, here is the difficulty that we have in going along with that argument. The Pennsylvania Superior Court in the *Harmony Electric Company vs. Public Service Commission*, tried on April 18, 1930, in the opinion of Judge Lian, had this set of facts before it, and I shall if Your Honor wants me to, set them forth in substance, but I call Your Honor's attention to the strict analogy in that case and the case which you are now hearing.

The Harmony Electric Company capital stock was owned by a railway company, the Pittsburgh Harmony, Butler and New Castle Railway Company. All of that stock of the Harmony Electric Company was pledged under a mortgage of the Pittsburgh Harmony Butler Railway Company, along with all of the stock of two other railway companies. So at that point factually the analogy is that there was an electric company that owned a railway company which also owned another railway company, and as distinct from it the railway company owned a steam heating company and an electric company. The revenues of the railway company became impaired to the point where it was not making operating expenses, just as we submit is really the fact here. The only modification I want to make on that statement is, we are saying

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the railway company is not making operating expenses. I mean any reasonable allowance towards its depreciation reserve. So the Harmony Electric Company filed a petition with the Commission, and asked that it be allowed to increase its industrial rates to get more revenue. In support of its position it said that its rates by comparison with other companies serving the same territory were quite low, and hence it asked that it be permitted to charge more rates, thereby get more revenue to pass to the railway company, to permit the continued operation of the railway company.

Now, Judge Linn after reciting the state of facts which I have just recited to Your Honor, and after quoting the testimony in the case, in which the President or officer of the company frankly admitted that the railway company could not make any further charges, even that the electric company could not charge the railway company any more for power because its operating expenses were then at a point that it could not stand any more, after that recitation of facts, the court said:

"A study of the evidence leaves no doubt that in substance the parties reasoned thus: 'Our railway business is losing money; our industrial rates are too low when compared with those of three other companies; in the interest of the Treasury of the holding company to which the profits of all the affiliated subsidiaries ultimately go, we shall increase the power rates to recoup the losses made in the operation of the street railways.'"

Now, that is what Judge Linn said was their reason. We are not here asking at any time to recoup any losses of this Railway. We are prepared at the appropriate time to offer exhibits showing that all we are asking is to just get enough money in the Railway to permit it to continue going, and not be sold under the hammer or scrapped. That was the reasoning of the company in this case. The court says, now, there is perhaps no legal objection to that position if the increase were justified by facts found

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after careful scrutiny of the inter corporate relationships reflected in the various operations of each company. Then later in his opinion he makes the observation that the difficulty of the Electric Company in this matter was that it had offered before the Commission no evidence to show that it was not earning from these groups of property a sufficient sum of money to permit this legal proposition to be considered, and secondly, that there was no evidence before the Commission that would permit any conceivable inclusion of a fair return.

Now, what frankly we are afraid of is this, and I repeat that I don't want to spend any time of any consequence on questioning, but what we are afraid of is this: We close our case, and we don't offer any evidence as to the value of the Railway Company or the Steam Heat Company, we confine ourselves merely to an effort to show how much money they are taking in, and how much we need from this group of properties to in some manner take care of the bonds, refund them, or do something with them, just confining ourselves to that phase of it. Then we will be met with the proposition here or hereafter, "That you didn't include in your record any evidence to show whether the Steam Heat Company was making a fair return, whether the Railway Company was making a fair return, whether the combined revenue of all four of them was a fair return. You are stating it, you argue it, it may have been a fact. The Commission may have had private notice of it by virtue of its annual reports, but there is nothing in this record to indicate that you were not making a fair return on all of these properties as a combined unit or separately."

To illustrate it another way, if I may, suppose the combined net from these properties is X dollars, suppose the combined value of these properties is Y dollars, and suppose Y would be six percent of X. That may be true because of the earnings of the Electric Company and the Steam Heat Company—I don't know whether it is, I

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have not made such a calculation, because that is in the calculation by Mr. Katz who states that condition existed, then how would the Commission know, or how would anybody else know how much of a reduction in revenue of the Electric Company might properly be made to bring it to the point where two conditions concurrently are met, first, that enough revenue is left to carry on the Railway, and second, that they are only getting a fair return, treated more or less as a single unit.

I say to Your Honor with all the sincerity of which I am capable, under our construction of that case we feel constrained to make the most vigorous effort we can to get this evidence in the record, because we believe the court has said to us in fact, or to anybody in that situation, that that is a necessary prerequisite to what may perhaps be a sound legal proposition. I don't want to be misleading, I am not suggesting that the Superior Court has said categorically that that is a sound legal objection. I am not stating that in their opinion, which I read to Your Honor, they have said perhaps that is a sound legal proposition, but you don't have here the prerequisite to support your proposition.

Now, if the Commission please, that is the principal reason and the main reason that we believe this is admissible. There are other reasons which, so far as I am concerned, I say to you frankly are unimportant, although technical, that prevent the inclusion of the evidence, and if I were to argue that those were the principal reasons I would be misleading this Commission. This is our principal reason, and the other reasons are these: In the first place the Commission itself has interjected into this record certain evidence as to the book costs of these properties. Mr. McShea in his own testimony made some reference to the book costs of these other properties, and we shall certainly be able to show Your Honor at the proper time that a substantial part of the property of this Railway Company is used by the

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Electric Company right today, and has been used for months, owned by the Railway Company, and it seems to me, therefore, it is perfectly proper that all of these property accounts be before the Commission.

In the second and third places it has been contended by the Commission that the respondent does not make a compensatory rate on the sale of energy to the Railway Company. Now again that brings up the question, or might bring up the question, from our conception of the case it does not, but it could be argued to the contrary by Mr. Miller that in order for the Commission to know whether you are getting a compensatory rate we have got to know how much of this property is dedicated to the service of the Steam Heat Company; we have got to know whether the generation facilities which Mr. Palmer says don't belong in the respondent's rate base—if they don't belong there obviously they have to go in the Steam Heat Company's rate base, they cannot be left hanging in the air; they cannot be said for the purpose of this case, they have no place in your rate base, and when we get to the Steam Heat Company, we are sorry but they belong in the Electric Company's rate base.

The same proposition is raised with respect to the sale of energy to the Railways Company. Now, we submit for all of these reasons, if Your Honor please, because of the questions that have been raised in this case itself, as to joint property ownership that the property is appropriately included in one rate base or another. We think this case is clear authority for the proposition that it is not only evidence but that the company itself erred in not offering such evidence under a state of facts which to me is as analogous to the state of facts in this case as any legal authority can be found to exist in any proceeding. By that I mean the setup of the companies, their pledging of the stock the operations in one general community or area, they are just as they are here, and I have read Judge Linn's statement, and on that basis

we ask the right to offer in evidence in this case the reproduction cost estimates of the properties of the Railway Company, the Steam Heat Company and the Bus Company.

Mr. Miller: Mr. Commissioner, if Mr. Miles' position is taken to be sound, and he were permitted to put into this case the cost estimates it would be necessary for the Commission to study those reproduction cost estimates and to present accounting estimates if we felt these estimates were out of line. In other words, we would have four rate cases instead of one. We could not accept the reproduction cost estimates put in by Mr. Miles' witnesses as proper; we would have to investigate them, so that we would have to go into an investigation of the property of the York Railways Company, of the York Steam Heating Company of the York Bus Company in addition to the investigation which we have already made of the property of the Edison Electric Company, the respondent here. I don't think that there is anything in the Harmony Electric decision which would require the Commission to try four rate cases, and get into the valuations of four separate properties when only one is involved in the proceeding before the Commission. I don't think that the Harmony Electric decision goes any further than to point out that the company had not presented evidence of the type suggested by Mr. Miles in that proceeding. I don't think that the court went so far as to indicate that the Commission would have to admit such evidence in any proceeding before it, even a proceeding which was properly comparable to the Harmony Electric situation, and particularly in view of the fact that it would be necessary to draw out this case to inordinate lengths and to conduct lengthy and detailed examinations of the properties of companies which are not involved in this proceeding.

I object to any evidence along that line.

Mr. Miles: In response to Mr. Miller, first, as to the

inordinate length of the time required, viewed from the aspect of the respondent it is not going to increase the time, will not take up two hours throughout this entire case.

Secondly, as to the difficulties involved, of course, we recognize that Mr. Miller might feel that the Commission's staff should make some reproduction cost studies. As a matter of fact to be perfectly frank about it, there was no such study made even as to the respondent's property. They are taking the 1935 appraisal of Day and Zimmerman, making some adjustments, saying that is our study, and I take it that it is highly improbable that this Commission would embark upon detailed cost estimates of these properties. For every practical reason, if for no other reason, the annual reports filed with this Commission will show, if you want to accept the value of the Railway Company to be one-fifth of the figure which we say its reproduction cost is, it is not making a dime, so when you talk about checking up values it does not mean anything, because the company is not making any money on anybody's valuation.

The Commissioner: Mr. Miles, I agree with you entirely that as to any burden put upon the Commission by extensive investigations of the other three companies as a reason for not allowing this testimony, I don't think that holds. If it is proper to allow it the Commission would be required to do whatever was necessary and proper to arrive at a conclusion whether it took one man one day or a hundred men a year. That has nothing to do with it, but I think there is an important factor here, and as a matter of fact this has nothing to do with the entirely proper conduct of this case, or the entirely proper management of the present companies, I am not attempting by what I say to criticize that, but the fact of the matter is, which everyone will admit I think, that the record of financing and control of these companies in the past has certainly been malodorous. That has nothing to do with

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the present situation. However, you have a situation in York—I am talking about years gone by which created certain situations of financing the present financial structure which have nothing whatever to do with this case, however, York Railways has a large bonded debt. Those bonds are due as I understand it, this year.

Mr. Miles: December 2nd.

The Commissioner: In the fall of this year. Anybody knows that York Railways is not earning any money. If it is not completely in the red it is so close to it that the difference is not worth discussing, and it cannot meet the proper payments on its bonds, cannot meet the interest charges in themselves. Therefore, if York Railways stands alone the difficulties of refinancing that bond issue I suppose are insuperable.

The Commission has had a number of cases before it recently, particularly the situation in Harrisburg with respect to the Railway Company where in fact the same situation was apparent, that the Railway Company could not earn any return on its security issued as they then were constituted, and you have the same old sad story of, I won't say shady, but inflated financing of the good old days. In that case the company met its situation by first suggesting that it cut its financial structure in half, and when the Commission objected to that it made further suggestions and they complied with the suggestion of the Commission and the financial structure is now about one-fourth of what it was. They have gone through their reconstruction, and they are now in position, with the help of the Commission, in substituting bus service for railway service, to really and honestly earn money on their capital stock, and everybody seems to be reasonably satisfied. The bondholders and the security holders took a loss in capital, but at least they are getting some return where before they got nothing.

Now, it seems to me there is a remedy for the York Railways under that approach. However, that may be

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the Commission's position has been clearly stated, it seems to me, repeatedly during the last few years, at least since I have been on the Commission, that the Commission is not willing that a sound, prosperous electric utility should be allowed to carry indefinitely in the future a street railway company which is either dying or is certainly anemic.

I certainly have sympathy with the security holders at least the local security holders of the York Railways Company in the situation that is before them, but I don't feel that the consumers of the Edison Light and Power Company who will benefit by reductions in rates if they are made, if the Commission feels and is sustained that they are earning an excessive amount, and it seems to me that is paramount, as against the proposed benefit to the public, in allowing the excess profits of the Edison Light and Power Company to be translated into the York Railways for the purpose of maintaining their present financial structure. That is what it amounts to it seems to me, whether my use of the word, "excess" is well advised or not, that is the point. Certainly I believe we have a responsibility to the people in York to see that the present utility service is maintained satisfactorily if we can. But it seems to me that there is a remedy for the York Railways Company as an alternative to complete collapse, if they cannot refinance their bond issue under the present financial structure, they have the remedy of coming in under seventy-seven to reduce their structure.

Mr. Miles: May I just interject this; Your Honor must bear in mind that the pledge of this stock of the Electric Company is under that indenture.

The Commissioner: I realize that the situation is complicated, and no bondholder is willing—

Mr. Miles: I don't say any bondholder, but any appreciable number has the right to cause foreclosure and sale of the stock of the Electric Company as well as the physical property of the Railways.

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The Commissioner: But no matter what happens the service to the public of the Edison Light and Power Company is not going to be impaired, you know that as a practical matter.

Now, as to the inter-relation between these four companies on the theory that they render, because of the setup, Edison Light and Power Company substantial benefits, it seems to me you could extend that theoretically to a dozen affiliates, and the one very prosperous in the group should carry them all. Frankly, I don't follow that argument. It seems to me that the Commission must, or should, and again I only speak for myself, decide this question on whether the Edison Light and Power Company is earning more than a fair return on its own property used and useful in the public service, plus whatever should be allowed for the use of property of the York Railways and Steam Heat Companies, which is used by the Edison Light and Power to render service to other than the York Railways or the Steam Heat Company.

Now, as to that property, and I take it there is some from what you stated, I am certainly prepared to rule that the testimony as to that part of the property that can be shown is used and useful in rendering service to other than these two companies should be offered in connection with that particular phase of the proposition.

Mr. Miller: That is not quite so really, Mr. Commissioner.

The Commissioner: If there is a piece of York Railway property that is used entirely and solely by the Edison Light and Power Company for the purpose of delivering current to customers of the Edison Light and Power Company, other than York Railways, I say that testimony as to that is pertinent in this case, not as to whether it should be allowed, that is your opinion, but I have mine, as to allowing testimony to go in here as to the value of the whole property of the York Railways, the Steam Heat Company and the Bus Company. I rule that that testi-

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mony should be excluded from this record with the further statement; that at the next session of the Commission, which is next Monday, and before further hearings, I shall present my ruling to the Commission for its determination as a Commission, and the parties will be notified as to the decision of the Commission before the next hearing.

Mr. Miles: May we have an exception to the ruling of the Commission.

The Commissioner: An exception noted. I shall present the matter next week to the Commission and the company will be notified as to the decision of the whole Commission before further hearings are held. If I am overruled then we can go ahead.

Mr. Miles: I take it that that is extremely unlikely.

The Commissioner: It has happened many times. The Commission does not always accept the ruling of the sitting Commissioner, however, I think it will in this case.

Mr. Miles: May I, for the record, inquire whether the ruling of the Commissioner just announced will also deny to the respondent the right to offer any evidence, any statements of the revenues and expenses of the York Railways Company, the York Steam Heat Company or the York Bus Company. I say quite frankly to you under our conception of the case that is clearly admissible under the Harmony case.

The Commissioner: I didn't understand that I was ruling on that. I understood that I was ruling on the testimony you proposed to offer through Mr. Braden.

Mr. Miles: That is right.

Mr. Miller: We would object to that, of course, Mr. Commissioner, on the same theory, that a well horse cannot be compelled to drag the dead mule. When we are trying a case involving the Electric Company, it is the proper expenses of the Electric Company only that should be considered.

The Commissioner: As to that I think I stated for the record myself yesterday, or asked a question which

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advanced it, and matters are on the record which so indicate, in fact I stated just a moment ago that everybody agrees that the Railways Company is operating in the red. I think there is no question about that, and the argument presented here is as I stated that apparently Edison Light and Power shall be able to tide over York Railways at least to the point of enabling it to function, isn't that correct.

Mr. Miles: That is one of the reasons why we think it is admissible.

The Commissioner: Generally that function is re-financing of the six million dollar bond issue which is due in the fall, but I think for the same reasons that are in my mind, that if my ruling on the other matter is correct, I see no value to the Commission in this case in producing of record the earnings and expenses of these other three companies, and I make the same ruling with the same exception and the same presentation to the Commission.

Mr. Miles: May I just for the purpose of the record make an offer?

The Commissioner: Certainly.

Mr. Miles: We offer on behalf of the respondent evidence consisting of estimates of the reproduction cost of the properties of the York Railways Company, the York Steam Heating Company and the York Bus Company; evidence of the original cost of the properties of the York Railways Company, the York Steam Heat Company and the Bus Company, and evidence comprising statements of operating revenues and expenses relating to the York Railways Company, the York Steam Heat Company and the York Bus Company. Such evidence being offered for the purpose of showing the value and earnings of each of the three companies, as an individual corporation and treated as a combined unit, and such evidence being proffered as part of other evidence offered by respondent in behalf of Edison Light and Power Company relating only to its property, revenues and expenses.

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Mr. Miller: To keep the record straight, I will object on the ground that it is irrelevant and immaterial.

The Commissioner: I will sustain the objection and note an exception, and state that the matter will be presented to the whole Commission as to the correctness of the ruling at the next session.

On the basis of that ruling I rule that only that part of Exhibit 2—

Mr. Miles: That has not been offered in evidence. That is the reason I raised this question at this stage of the proceeding.

The Commissioner: That is correct.

Mr. Miles: The respondent offers in evidence what has been identified and marked as Respondent's Exhibit No. 2, the said exhibit consisting of an estimate by Day and Zimmerman Incorporated of the reproduction cost new, reproduction cost new less accrued depreciation on the plant and property of the Edison Light and Power Company, York Railways Company, York Steam Heat Company and the York Bus Company.

Mr. Miller: Mr. Commissioner, we think it is perfectly proper to have the reproduction cost estimate relating to the property of the respondent, the Edison Light and Power Company. We object, however, to the reproduction cost estimates and the figures relating to the York Bus Company and York Railways Company and the York Steam Heat Company. We don't demand that the exhibit be physically separated so that those figures relating to the three companies last mentioned are eliminated entirely, but we do ask that the Commission in its consideration of this proceeding, and its decision thereon, shall not consider those figures in any way, and shall consider only the portions of the exhibit related to the respondent company.

The Commissioner: Respondent's Exhibit No. 2 will be admitted to the record with the understanding that only that part of Exhibit 2 relating to Edison Light and Power

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Company will be considered as part of this case, and the record as to the other three companies will be excluded from consideration in this proceeding.

Mr. Miller: To which, we of course, except.

The Commissioner: Exception noted.

I would like to say, however, and I would like to make myself clear for the record, that any testimony that the respondent has in this case as to any property of the York Railways or any other affiliate, that is wholly used by the Edison Light and Power Company for rendering service to consumers other than the affiliates in question, will be allowed by the sitting Commissioner to appear in the record.

Mr. Miller: Do I understand that it is your thought that the company would be entitled to a fair return on any property which it may use regardless of who owns it.

The Commissioner: I don't wish that inference to be drawn from what I said. I simply say that such testimony would be allowed to be presented and put in the record for the consideration and determination by the Commission as to how it should be treated in relation to the setup of the Edison Light and Power Company.

Mr. Miller: In other words, it would be admitted—

The Commissioner: I am not expressing any opinion at this time as to the capitalization of property in this setup. I am simply saying that I think it is pertinent for the record to have it appear there.

Mr. Miller: In order to round out the factual picture.

The Commissioner: In order to round out the factual picture without any indication on my part as to what should or should not be done with it.

Mr. Miller: I have no objection to that.

Mr. Miles: Your honor, in view of the Commissioner's ruling, and also having in mind that it has come to be noon, I wonder whether we may have a recess, in order to determine the future policy of the respondent in this case.

The Commissioner: In any case I would like to go on

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with any further testimony you have for the Edison Light and Power Company during this day's hearing, unless you decide on some other policy.

We will declare a recess until one thirty o'clock p. m.

AFTER RECESS.

Mr. Miller: Mr. Commissioner, I might state at the outset of our session this afternoon that I will not press Mr. Seelye for a breakdown of his figures on organization expenses, and I understand that Mr. Miles is willing to waive Mr. Bierman's furnishing similar figures.

Mr. Miles: That is correct.

Now, Your Honor, before proceeding further, in view of the ruling of the Commissioner before recess, there is one other matter that we would like to raise so that we may have the record perfectly clear:

As a part of the respondent's conception of this case, which I attempted to outline in previous arguments, the respondent intended to offer witnesses who are associated with the management of these companies to lay before the Commission a comprehensive plan of the management, looking to the continuance of the railway operations of the York Railways Company. We felt that such testimony, and with all deference to Your Honor still feel, that such testimony is properly a part of this proceeding, because if Your Honor had seen fit to sustain our theory with respect to the fixing of the rates of return in this case, having in mind in fixing that rate of return that the amount allowed would permit the continuance of the Railways, there was thereby evolved upon ourselves the duty of showing what our plan was for the continuance of the Railways, and what revenues would be required in order to consummate a continuity of that plan, hence we had testimony, and have testimony and evidence available to lay that plan before the Commission. In view of Your

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Honor's ruling, however, this morning, we naturally don't want to be subjected to the burden of expense of bringing people here, in preparing voluminous exhibits along that line if Your Honor feels that such testimony is not properly admissible in this proceeding, and I should, therefore, like to inquire at this time as to what is Your Honor's reaction with respect to that situation.

The Commissioner: I do feel that that is not a part of this record.

Mr. Miles: I rather anticipated from your earlier rulings that you would. Therefore, for the purpose of the record may we offer to introduce testimony and evidence setting forth the plan contemplated by the management of the York Railways Company for its continued operation and its plan for refunding its obligations on bonds maturing December 2nd, 1937, such offer being made in connection with the previous offers of proof submitted by the respondent incident to its conception of the rate of return to which the Edison Company is entitled.

Mr. Miller: I make the same objection that it is irrelevant and immaterial in this proceeding.

The Commissioner: Objection sustained; note an exception for the respondent.

Mr. Miles: Now, your Honor, I am going to make one inquiry of the Commissioner, and I hope the spirit in which I make it will be understood. During Your Honor's observation before recess a statement was made with respect to the malodorous conduct of this company. I should merely like to inquire as to whether that observation was intended to apply to the present management.

The Commissioner: I think I stated clearly that it did not apply to the present situation, and I want to put that clearly on the record.

Mr. Miles: I think you did, but there was some confusion as to whether you did or not.

The Commissioner: There was some question as to the past rigging of this company, as to which the present

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management, as I understand it has no responsibility whatsoever.

Mr. Miles: Thank you very much.

The Commissioner: My comments were intended to apply in no way to the conduct of this case as now before us.

Mr. Miles: Now, if Your Honor please, the only other evidence which the respondent is prepared to submit at this time, and I don't mean to imply that that is only going to take a few minutes' time, it may take an hour or two, is testimony with respect to the question of whether the generating facilities are properly a part of the rate base of the Edison Company, and for the purpose of refuting testimony adduced by the Commission suggesting that the generation of steam and its sale to the Steam Heat Company was not at a compensatory rate, and that the sale of energy to the Railway was not at a compensatory rate, but at the conclusion of that testimony we are simply compelled to ask Your Honor for a recess of some days. We had contemplated proceeding on our own theory of this case, and unfortunately the exhibits and data which we have available as a result of Your Honor's ruling are now out of the case, and the accounting data and other information which was to follow is not in hand.

The Commissioner: Of course, we will receive the testimony you indicate you desire to present today, which is in my opinion entirely proper in this case, and then as I understand it, you desire an adjournment to a date in the near future when you can present certain accounting data in relation to the Edison Light and Power Company.

Mr. Miles: And some other additional information.

The Commissioner: And whatever you have in addition before we would be ready to proceed to cross examine?

Mr. Miller: I have no objection to that, Mr. Commissioner. I think, of course, you are going to refer the matter of your ruling to the entire Commission for a

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Decision upon it, and I think that the case might well be adjourned for a reasonable time.

The Commissioner: I would like to ask Mr. Miles at this time how long it will take him before the accounting data and testimony that you have in process of preparing will be ready as to the Edison Light and Power Company.

Mr. Miles: Your Honor, we can be prepared at the expiration of one more week to put in all of the balance of the case, in as many consecutive days as the Commission cares to sit.

The Commissioner: Would you be ready Wednesday or Thursday?

Mr. Miller: I will be in Philadelphia two days next week in the Perkasio Sewer matter which I have started.

The Commissioner: Would it suit you, Mr. Miller, to proceed with this case next week?

Mr. Miller: I don't see how I could. The following week I will be down at Washington, I think at least Mr. Beamish wants me to be in Washington on the A. G. E. case.

The Commissioner: In that case it would require a continuance until the second week in March.

Mr. Miller: The tenth I believe will be Wednesday. A week from today will be the twenty-fifth.

Mr. Miles: Our situation is this: We could be ready by next Wednesday or Thursday to go on. Mr. Seelye, however, is before the New York Commission in the Syracuse case on Thursday of next week. Any time after next week we will be prepared.

The Commissioner: According to Mr. Miller's suggestion the only thing that could be done, the case after the testimony that you are able to produce today would be continued until March ten.

(Remarks by Mr. Miller at his request off the record.)

The Commissioner: We will consider then that this case will be continued to March tenth.

John B. Ink—For Respondent—Direct

Mr. Miles: I might say we consider it will take two or three days to finish our case.

The Commissioner: We will set March tenth, eleventh and twelfth as the time for the next hearing.

Mr. Miller: We will be prepared to cross examine at that time, Mr. Commissioner.

The Commissioner: Note on the record the fact that the continuance beyond next week is due to the fact that Mr. Miller has previous engagements due to cases in Philadelphia and Washington, and not because of any delay on the part of the respondent company.

JOHN B. INK, a witness called in behalf of the Respondent, being duly sworn, was examined and testified as follows on

Direct Examination.

By Mr. Miles:

Q. Mr. Ink, please state your full name and occupation? A. John B. Ink, Engineer with Day and Zimmerman, Incorporated.

(Remarks by Mr. Miles at his request off the record.)

By Mr. Miles:

Q. Will you state what has been your experience as an electrical engineer, with particular reference to your experience in connection with the designing and construction of electric generating units? A. From December 1935 to date, I have been engineer on reports on property in connection with certification of registration statements to Securities and Exchange Commission. From 1928 to 1935 engineer with the United Engineers Construction on design and construction of electric generating plants, and industrial plants. Some of the work involved was an extension to the Richmond generating station of the Philadelphia Electric Company; engineering on design and construction of generating plants for the Gulf Refining Company, Port Arthur, Texas; Dominion Coal and Iron Company in the city of Nova Scotia; the Hawaiian Electric Company at Hawaii; industrial plants. The principal one was a generating plant;

John D. Ink—For Respondent—Lawyer

a plate mill and miscellaneous items for the Illinois Steel Works, Chicago. 1909 to 1908 engineer with Dwight P. Robinson, design and construction of transmission lines, sub-stations and industrial plants. Included in that were lines and sub-stations for the Duquesne Light Company; lines for the Penn Electric Company; lines and sub-stations for the Los Angeles Gas and Electric; several stations for the New Orleans Public Service Company; and industrial work, including continuous mills for the American Rolling Mill Company at Middletown, Ashland, Kentucky and Butler, Pennsylvania. From 1912 to 1920 engineer with Stone and Webster, transmission line and sub-station design. Degree of M. E. from Cornell 1912.

Q. Mr. Ink, have you personally inspected the generating facilities of the respondent and the methods pursuant to which such facilities are operated by it? A. Yes, sir.

Q. Will you state as part of your investigation whether you have had occasion to study the four party power agreement under which the respondent purchases electric energy for distribution and sale? A. Yes, sir.

Q. Now, I show you a paper marked Commission's Exhibit No. 7, and ask you whether that is a copy of the wholesale purchase power agreement to which you just referred? A. Yes, sir.

Q. Now, will you be good enough to refer to Article eight in this agreement and read into the record? A. Article eight, steam electric generating plant of York Company. The York Company agrees to maintain its present steam plant for emergency and standby service.

Mr. Miles: Now, if your Honor will permit me at this point of the examination, I would like to read myself into the record paragraphs one, two and three of Article three of this agreement.

The Commissioner: All right, proceed, Mr. Miles.

Mr. Miles: I ask that the witness who has testified already that he has personally examined and is familiar with this contract to follow my reading of it.

(Remarks by Mr. Miles at his request off the record.)

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Mr. Willen: Article three definition of phrase contract requirements of York Company. When the phrase "contract requirements of York Company" appears hereinafter in this agreement it shall be taken to mean, all of the electric power and energy requirements of the York Company for use or sale within its existing territory, as those requirements exist or would hereafter exist with the division of territory and business agreement between York Company and Metropolitan Edison bearing even date herewith remaining in force and unchanged and in any additional territory in York County that York Company may in the future serve other than territory to which Metropolitan Edison does not on the date of this agreement directly supply power and energy, and two, all of the electric power and energy requirements of York Railways Company, Glen Rock Electric Light and Power Company and all electric power and energy sold by York Company to any other electric utility in York County other than Hydro and Metropolitan Edison except, "a" such electrical energy and power as York Company may generate in connection with the supply of steam for heating or for the production of service or for the purpose of maintaining its generating plant in readiness to serve.

Now, having in mind, Mr. Ink, the paragraphs of the contract which have been read by you and partially read by me into the record, I ask you what in your opinion is required for the respondent to maintain its generating plant in readiness to serve, basing your opinion upon your experience as an electrical engineer?

A. They would be required to maintain at least two of their boilers under pressure, with a force of men to operate the boiler room, and also a force of men to operate the turbine room. They would also be required to maintain all this equipment in operating condition.

Q. Now, what if any eliminations could be made from their present method of operations in order to maintain that plant in readiness to serve? A. The only reduction in force would be

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the labor required for as handling. Otherwise, the operating force would be identical with that now maintained.

Q. Now, based upon your experience, Mr. Ink, in connection with the operating of generating facilities have you any opinion as to whether the generating plant of the respondent would have any practical value for emergency standby service unless it was maintained as a hot standby? A. It would have very little value as a standby unless it was maintained hot.

Q. Why do you say that? A. Because any interruption which would require the use of this standby would occur too suddenly to permit them to get fire under the boilers. That would take about an hour's time.

Q. So that expressed in my parlance as a layman, unless it was maintained with fire, very hot and ready to go it would take whatever time is required to get it in that condition before you could use it for emergency purposes? A. Yes, sir.

Q. Mr. Ink, have you had any personal experience as a member or in an advising capacity in connection with the negotiation of purchase power contracts? A. I have in an advising capacity.

Q. Now, having in mind your experience in that connection, and further having in mind the capacity of this particular generating plant of the respondent, and your knowledge of its method of operation, have you any opinion as to whether the existence of that plant of the respondent and its maintenance in the manner that it is maintained constitutes any bargaining factor to the respondent in the purchasing of power? A. The fact that the respondent has an established generating plant which could be extended to take care of its entire requirements gives it an advantage in bargaining for the purchase of power that would not be enjoyed by a purchaser who had no generating facilities or organization which would serve as a foundation for a generating plant to take care of his entire requirements.

Q. Now, I should like to next inquire as to the ability of the steam and electric generating equipment of the central plant to carry the maximum demand for steam by the Steam Heating Company and at the same time operate the electric generating

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equipment up to the capacity required for the important central city load in the city of York? A. The plant has the necessary capacity to carry the maximum recorded steam heat load and at the same time to carry about seven thousand kilowatts of electric load.

Q. Isn't it a fact that the seven thousand kilowatts of the electric load would take care of the more important public institutions, hospitals and a substantial part of the central portion of the city? A. It is, yes, sir.

Q. Now, can you tell us whether you have actually caused any test to be made for the purpose of testing the accuracy of your last answer? A. Yes, sir.

Q. First, before inquiring as to the character of the results tell us what were the results of the test that you did make. What I am getting there, Mr. Ink, did these tests prove that there was sufficient capacity to do what you have just testified? A. Yes, sir.

Q. Now, are those boilers equipped with the character of meters that permitted an accurate test to be made? A. Yes, sir.

Q. With that foundation, tell us what sort of test you made so that we will know the scope of it? A. The test was made by the respondent at my request, and consisted in loading the boilers in pairs for a period of two hours. The results with boilers 1 and 2, produced 71,958 pounds of steam per hour; 3 and 4, 63,920 pounds per hour; 5 and 6, 93,273 pounds per hour, or a total of 229,151 pounds of steam per hour.

The maximum recorded demand on the Steam Heating Company is 125,255 pounds. That is from the reading of the boiler charts for January 28, 1936. That leaves for the operation on the No. 2 turbine the difference between the total output of 222,151 pounds and the requirements of the Steam Heat Company plus the boiler auxiliaries which are necessary, of 125,255 pounds, leaving 103,896 pounds for operation of the turbine at the rate of nineteen pounds of steam per kilowatt hour. This much steam will produce 5,268 kilowatts. In the No. 2 turbine, which has a name plate rating of 4,000 kilowatts, 5,000 KVA, but which has been operated up to 6,300 kilowatts an hour. At the

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same time that No. 2 turbine is producing this much power, 1,500 kilowatts of power is available from No. 1 turbine, which operates on steam delivered to the Steam Heat Company. The total generative power under these conditions is 6,968 kilowatts.

Q. What was the last figure there? A. 6,968 kilowatts.

Q. Of energy that could be generated? A. Yes, sir.

Q. And what is the company's peak? A. The company's peak in 1936 was 18,200 kilowatts.

Q. So that it is capable, assuming that at the same time it is generating its maximum capacity of steam requirements, its all time high so to speak, of producing about one-third of the peak load requirements of the respondent? A. Yes, a little more than one-third.

By the Commissioner:

Q. What is the requirement for the York Railways at that peak; how much of that 18,000 is required by York Railways? A. Probably 1,000 kilowatts.

By Mr. Miles:

Q. Is that coincidental with the other peak? A. The railway peak is not coincidental with the—that is, the hourly peak of the railway is not coincidental with the hourly peak for the system.

Q. Now, Mr. Ink, in your testimony you referred to a date, to the date of December 28, 1936, with respect to steam boiler maximum capacity. Why did you select that date? A. There are—

Q. Before we go into that, isn't that the all time high, so far as the records of the company disclosed? A. There were two days practically identical in January, 1936, which were an all time high for the system.

By the Commissioner:

Q. The all time high for the steam demand and the all time high for the electrical demand? A. Yes, sir. The days were January 24 and January 28. The records are not complete for

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the 24th, but as the total output for the day is practically the same as the 28th we can assume that the peak hour was probably not far different on the 24th from the 28th.

By Mr. Miles:

Q. Now, have you among your work sheets there the original chart, bearing the certification of the chief of operations which portray the result of the tests to which you have referred, and which indicate the pounds of steam produced in the test period?

A. Yes, sir.

Q. May I see that chart just a minute?

(Witness handed charts to counsel.)

Mr. Miles: Now, Your Honor, the paper which the witness has just handed me is the original chart and it is certified on February 5, 1937, sworn to before a notary public on the same day and bears the signature of M. B. Turnbull, Chief of Operations. We should like to state for the record and for the benefit of counsel for the Commission that we will be very glad to have Mr. Palmer or anybody for counsel of the Commission examine this chart whenever you care to.

The Commissioner: Are you going to offer it as an exhibit?

Mr. Miles: The only difference is that I don't have photostatic copies. We will have them made, and we offer this with the understanding that we may furnish copies later on.

Charts showing amount of steam produced, produced and marked Respondent's Exhibit No. 3, E. E. M., 2/18/37.

By Mr. Miles:

Q. Is this the chart to which you referred in your last answer?

A. Yes, sir.

Mr. Miles: We now offer in evidence Respondent's Exhibit No. 3, the chart just identified and marked.

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Mr. Miller: No objection.

The Commissioner: Respondent's Exhibit No. 3 will be admitted to the record.

By Mr. Miles:

Q. Mr. Ink, it has been stated by witnesses for the Commission that the respondent does not have sufficient boiler capacity to take care of the maximum steam requirements for steam heat, and at the same time have sufficient steam to provide the maximum electrical output from the turbo generators. Have you made an investigation to determine the soundness of this observation? A. I believe that was based on the assumption that one of the six boilers must at all times be maintained as a spare. The figures which I just gave you on the output for the maximum day assumed the boilers operating—

Q. Assumed what? A. The boilers operating normally to supply the steam load only. There is at least one spare boiler at all times available, so that the respondent can and does keep his boilers, maintains them in first class operating order at all times, so that it is hardly necessary to require the spare boiler to be available on the rare occasions that it is necessary to operate standby electrical generating equipment. There was in the year 1936, which was a year of maximum demand on the steam heating system, there were only three days when the load was of such a magnitude that the hot load and the No. 2 generator could not have been carried with five boilers. The chance of requiring standby electric generating capacity on the same days that we have the maximum steam load demand—steam hot load demand is very remote.

By the Commissioner:

Q. It is not possible, is it, for this plant to furnish the maximum load for the steam heating, plus the maximum load for the electric company at one time? I understood you to say that they could furnish about one-third of the maximum load of the Electric Company? A. About one-third. They can't furnish the entire electric load under any conditions. They have not suffi-

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cient equipment. They can only furnish the maximum that they can get out of No. 2 turbine which is slightly over 6000 kilowatts, and No. 1 turbine which can produce 1700.

Q. Under those circumstances of furnishing at the same time a maximum steam heat load would there be enough capacity there to furnish in case of failure of the supply by purchase the ordinary supply for these two interconnections, would there be enough to furnish electric energy for the essential service of York? A. Yes, sir, there would.

Q. The maximum capacity such as hospitals, and so on? A. Yes, sir.

Q. And street lighting? A. Yes, sir.

The Commissioner declared a recess of five minutes.

AFTER RECESS.

JOHN B. INK, recalled.

Direct Examination.

By Mr. Miles:

Q. Now, Mr. Ink, I hand you a chart entitled "Edison Light and Power Company—Chart showing total pounds of steam generated each hour of the day January 28, 1936," and I ask you whether that was prepared under your supervision? A. Yes, sir.

Q. Now, that chart as I understand it indicates in the right hand column the pounds of steam, and in the lower column the hour at which the various peaks and valleys were reached, is that right? A. That is correct.

Q. And it shows that the total pounds of steam generated in that day aggregate about how much? A. About 125,000 pounds per hour at the maximum hour.

Q. And that is January 28, 1936, which is the day you testified was the all time high? A. Yes, sir.

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Q. And that is the figure which you have used in your testimony in this respect? A. Yes, sir.

Edison Light and Power Company—Chart showing total pounds of steam generated each hour of the day January 28, 1936, produced and marked Respondent's Exhibit No. 4, E. E. M., 2/18/37.

Mr. Miles: The respondent offers in evidence the chart just identified by the witness.

Mr. Miller: No objection.

The Commissioner: Respondent's Exhibit No. 4 will be accepted for the record.

By Mr. Miles:

Q. Mr. Ink, I hand you another diagrammatical sketch which is entitled, "Diagrammatical sketch of central generating station," and the general arrangement of the steam facilities of the Edison Light and Power Company, and ask you whether that was prepared under your supervision? A. It was, yes, sir.

Q. Now, as I understand it that sketch merely shows the physical layout and arrangement of the central generating plant and the installations located in it? A. That is correct.

Q. Indicating the boiler rooms and the electric conversion and control rooms and the turbine room? A. That is right.

Q. And then it also shows the substation and the old boiler room? A. Yes, sir.

Diagrammatical sketch of central generating station showing general arrangement of steam facilities, electrical generating units and conversion equipment; source of purchased power and single line wiring diagram of principal electrical circuits produced and marked Respondent's Exhibit No. 5, E. E. M., 2/18/37.

Mr. Miles: Respondent offers in evidence the sketch to which the witness has just referred.

Mr. Miller: No objection.

The Commissioner: Respondent's Exhibit No. 5 will be admitted to the record.

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By Mr. Miles:

Q. Mr. Ink, I hand you four sheets, the first page being entitled, "Summary statement showing the beneficial interest or profit accruing to the electric company resulting from the operation of the central electric generating plant for the production of steam in lieu of operations on a strictly standby basis, during the year ended December 31, 1936," with three additional sheets representing the detail of the figures shown on the summary statement which I have read, and I ask you whether those sheets were prepared under your personal supervision? A. Yes, sir, they were.

Summary statement showing the beneficial interest or profit accruing to the electric company resulting from the operation of the central electric generating plant for the production of steam in lieu of operations on a strictly standby basis, during the year ended December 31, 1936, produced and marked Respondent's Exhibit No. 6, E. E. M., 2/18/37.

Mr. Miles: Respondent asks that the four sheets which the witness has just identified be merely marked by the stenographer.

By Mr. Miles:

Q. Now, I take up the first of the four sheets, the one which I read into the record, and which is entitled, "Summary statement." Will you take line 1, which is entitled, "Operation and maintenance costs incurred at the central power plant on the basis of actual operations during the year ended December 31, 1936," as shown by sheet No. 2 of this exhibit. Do I understand (remarks by Mr. Miles at his request off the record) that the figure of \$101,514 in the column to the right under "Boiler plant operations" represents that portion of the operation and maintenance costs actually incurred in connection with the central generating plant during the year ended December 31, 1936 that is allocable to the boiler plant operation? A. That is correct.

Q. And the next column to the right entitled, "Turbine plant

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operations" is the proportionate part of the aggregate operation and maintenance costs incurred in 1936 allocable to the turbine plant operations? A. That is right.

Q. The next column entitled, "Electric conversion and control" is the proportionate part of the aggregate of 1936 operation and maintenance costs incurred at the central power plant allocable to the electric conversion and control facilities? A. That is right.

Q. And the sum of the three items to which I have just referred in my last three questions aggregates \$142,178, which is the aggregate operation and maintenance cost incurred during the year 1936 at the central power plant? A. That is right.

Q. Now, take up the next line, what is meant by line 2 under the heading, "Items"? A. Line 2 is the estimated operation and maintenance cost that would be incurred if the plant was maintained strictly and only as a standby, with no production of steam for sale to the Steam Heat Company and no generation of electricity.

Q. In other words, if the respondent was not engaged in the generation and sale of steam, but operated its plant strictly as a standby, it would incur operating and maintenance costs, or it did incur operating and maintenance costs during the year 1936 of \$57,773? A. We estimate that that is the part of the actual operating and maintenance costs that would have been necessary to maintain the plant as a standby.

Q. In other words, they actually incurred \$142,178, and of that sum your estimate is, and the details of your estimate as shown on sheet 3 of this exhibit that \$57,773 of it would necessarily be allocated to the operation of the plant for strictly standby purposes, is that correct? A. Including the necessary operation of the electric conversion and control department.

Q. That is right. \$57,773 is the sum of the items shown in columns 1, 2 and 3 for each of the different functions or operations? A. Yes, sir.

Q. Now, proceeding with an analysis of the summary, and going to the extreme right hand column, because the first three columns are merely the breakdown between the three func-

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tional departments of the plant, going to the extreme right hand column, the \$84,405 shown on line 3 in column 4 is the increment cost of the steam and electric generation in excess of standby cost? A. That is right.

Q. Can I express it also perfectly truthfully in this way: That if the company had not engaged in the generation and sale of steam, but had only maintained the plant as standby it would have cost \$57,773? A. Yes, sir.

Q. So that in order to engage in the distribution and sale of steam it spent an additional \$84,405? A. That is right.

Q. Now, we come to line 4, Mr. Ink. Will you please state what the figure of \$102,122 shown on line 4 under columns 1 and 4 represents? A. That is the credit to operation due to supplying steam for the Steam Heat Company in the year 1936.

Q. Well, it is actual income received from the sale of steam by the Steam Heat Company? A. That is true.

Q. That is an actual book figure? A. Yes, sir.

Q. It is revenue which the company received from the sale of its steam? A. Yes, sir.

Q. Now, in the next line you have a figure in columns 2 and 4 of \$24,220. Will you tell me what that represents and how you arrive at it? A. That represents the amount that would have been paid to the power company under the contract had the power which was generated at central plant been purchased under the contract for purchased power.

Q. In other words, if the respondent had purchased all of its power in 1936 rather than having generated a certain part of it, the respondent would have paid for the purchasing of such power under its purchase power agreement the sum of \$24,220? A. That is right.

By the Commissioner:

Q. Now, you arrive at that figure by adding that much power to the amount of power actually purchased, you didn't calculate that power as power purchased separately from the other power? A. No, sir.

Q. But adding it to the power already purchased and at the

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advantageous rate that that larger consumption would give to the company, is that right? A. Yes, sir.

By Mr. Miles:

Q. In other words, we assume that we would have bought it at the most favorable rate available to us under the power contract? A. That is right.

Q. Now, going to line 6, in the fourth column you have the total of \$126,342, which is made up as I understand it from an addition of the figure of \$102,122 shown on line 4 in the same column, or the aggregate revenues received from the sale of steam and the sum of \$24,220 shown on line 5 in the same column? A. That is right.

By the Commissioner:

Q. You add together revenue received for steam and the amount that would have been paid for generated power had the power been purchased? A. That is right.

Mr. Miles: We add together the revenues received from the sale of the steam and the savings in the cost of power resulting from the generating as distinguished from the purchase of that much energy.

By Mr. Miles:

Q. That is correct, isn't it?

The Commissioner: No, I don't think it is a saving particularly. You add the revenue from the sale of steam to the amount that would have been paid for the generated power had the power been purchased under the contract.

Mr. Miles: I think we are both saying the same thing, Your Honor, because if we had not generated that much power our power costs would have been increased by the sum of \$24,220. That is the reason I put it that way.

The Commissioner: Even I can understand that.

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By Mr. Miles:

Q. Now, coming down to line 7 I notice that item is entitled, "Profit resulting from the sale of steam and generation of 3,925,100 KWH of energy but not including savings in cost of purchased energy resulting from compliance with article eight of purchased power contract." Now, I inquire, first, as to why you use the figure of 3,925,100 KWH? A. That is the amount of energy generated by the respondent during the year 1936.

Q. And it is that amount of kilowatt hours that would otherwise have been purchased under the power agreement? A. That is correct.

Q. And which would have cost at the most favorable rate \$24,220? A. That is right.

(Remarks by Mr. Miles at his request off the record.)

By Mr. Miles:

Q. Now, will you show how you arrive at the figure of \$41,937, which you show on line 7 in column 2, and after which figure is placed an asterisk? A. That is the sum of \$23,251, which is the net profit from the sale of steam; it is the difference between the increment between the amount received for the steam and the increment cost of producing that steam, plus \$17,899, which is the difference between the value of the kilowatt hours generated and the increment cost of producing that power, \$6,321.

Q. Well, suppose we break that down a little more. I mean by that break down all of the figures on line 7. The first figure on that line, namely, the one in column 1 is \$23,251, and that as I understand it is the difference between the figure of \$78,871 shown on line 3 of that column, or the cost of generating the steam and the \$102,122 which is the total revenue received from the steam? A. That is correct.

Q. And the \$17,899 shown in column 2, on line 7, is the difference between the cost of generating the 3,925,100 kilowatt hours of energy and what the company would have been required to pay for such energy at its most favorable contract rate? A. That is right.

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Q. That subtraction produces the sum of \$17,899, and still, confining ourselves to line 7, the item of \$787, is the difference between items shown opposite lines 1 and 2 with respect to the conversion and control room?

The Commissioner: In other words, that figure is subtracting \$787 from nothing gives \$787?

Mr. Miles: That is right.

By Mr. Miles:

Q. Resulting in a gross profit of \$41,937? A. That is right.

Q. Now, I notice you have an asterisk, Mr. Ink, after that last mentioned figure, and a foot note, and I will ask you to explain the basis of that foot note, and the reason for its being on the chart? A. In the event that respondent was not engaged in the generation and sale of steam and the central electric generating plant was merely maintained as a hot standby in compliance with Article VIII of purchased power contract; this profit would be replaced by the expense of \$36,842, which is the cost of maintaining the boiler plant and the turbine plant on the standby basis, together with a slight increase in the electric conversion and control when the plant is operating merely as a standby.

Q. All of which means, as we understand it, that if we merely operated the plant as a standby and purchased all of our power, and didn't engage in the sale of steam— A. Then we would be out of pocket \$36,842.

Q. So your statement is that the actual profit is the total between the \$41,937 and the \$36,842? A. Making a total of \$78,779 profit by virtue of its present method of operation.

The Commissioner: Mr. Miles, in that foot note shown by the asterisk that figure should be \$36,842?

Mr. Miles: Yes, sir.

The Commissioner: And also should not the words afterwards, "As shown by line 8, column 4 instead of line 4, column 4."

Mr. Miles: Yes, your Honor, that is correct.

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The Commissioner: I think there are two typographical errors there.

Mr. Miles: May I have the privilege of making that change on this exhibit?

The Commissioner: Yes, and I will mark this one.

By Mr. Miles:

Q. Now, Mr. Ink, the second page of this exhibit is nothing more than the breakdown between the boiler plant, the turbine plant and the electric conversion and control room of the operation and maintenance costs shown on line 1 of the first sheet?

A. Yes, sir, it is an allocation of that, of that operation and maintenance cost to the three departments, boiler plant, turbine plant and electric conversion and control.

Q. A further break down between direct labor, direct supplies and expenses, and proportion of superintendence. A. Yes, sir.

Q. And the third sheet of the exhibit is the break down of the estimated operation and maintenance costs aggregating \$57,773 as shown on line 2, column 4 of the first sheet, representing the proportion of the operating and maintenance costs that would be incurred if the plant was operated strictly on a standby basis? A. That is correct.

Q. And those figures are likewise broken down in precisely the same manner between the three functional departments of the plant, and further divided between direct labor, direct supplies and expenses and proportion of superintendence? A. Yes, sir.

Q. Now, the fourth sheet of the exhibit is for the purpose of establishing the details supporting the figure of \$24,220 mentioned on lines 6 and 7 of sheet 1, as being the cost of power to the respondent if it had purchased under this power agreement the number of kilowatt hours that is generated in 1936? A. That is correct.

Mr. Miles: Now, your Honor, we ask that this exhibit be accepted in evidence, marked as Respondent's Exhibit No. 6.

Mr. Miller: No objection.

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The Commissioner: Exhibit No. 6, consisting of four pages, will be admitted to the record.

By Mr. Miles:

Q. Mr. Ink, I hand you two sheets, the first being entitled, "Edison Light and Power Company, 1936 increment cost of service to York Railways Company and profit to Edison Light and Power Company, and the second sheet showing the derivation in detail of the estimated cost and profit," and ask whether that was prepared under your supervision? A. Yes, sir, it was.

Edison Light and Power Company, 1936 increment cost of service to York Railways Company and profit to Edison Light and Power Company, produced and marked Respondent's Exhibit No. 7, E. E. M., 2/18/37.

By Mr. Miles:

Q. Mr. Ink, as I understand this exhibit, from this total it is calculated to establish the cost of the energy sold by the respondent to Railways Company and the respondent's conception of the profit that results from that sale, that is correct, isn't it? A. That is correct.

Q. Now, taking page 1, line 1, column 1, do I understand that the first column indicates that in 1936 the York Railways Company used 4,232,300 kilowatt hours of energy? A. Yes, sir.

Q. Column 2, line 1, shows the total cost to York Railways Company of the power it purchased from the respondent? A. That is correct.

Q. In other words, let us be clear: That is not the cost to the respondent of that many kilowatt hours of energy but, it is really the price that it sold that many kilowatt hours of energy to the Railways Company for? A. That is right.

Q. So by dividing that cost expressed in dollars by the aggregate number of kilowatt hours we established the cost per kilowatt hours as shown on line 1, column 3, that is the cost to the Railways Company, is that right? A. That is right. That is the

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rate paid by the Railways Company to the Edison Company for power.

Q. And that rate was 9 mills per KWH? A. Yes, sir.

Q. Now, the second line, the first column is the figure of 71,151,000. Do I understand that that is the aggregate number of kilowatt hours of electric energy purchased by the respondent during 1936? A. Yes, sir, that is correct.

Q. The only modification to that being that that is exclusive of certain power it purchased under existing contracts, isn't it? I mean for particular customers? A. Yes, sir, that is correct.

Q. What was the total cost to the respondent, Mr. Ink, for that number of kilowatt hours in 1936? A. The total cost was \$548,244.

Q. What was the cost to the respondent per KWH? A. .771 mills—I beg your pardon, 7.71 mills.

Q. Now, the energy, therefore, which the respondent sold to the Railways Company in 1936 cost it 7.71 mills, and the Railways Company paid for that energy 9 mills? A. Correct.

Q. Now, what is the next line intended to disclose, Mr. Ink? A. That next line shows the cost to the Edison Company of purchasing power had they not purchased the power requirements of the railway. In other words, the kilowatt hours purchased without the railway would be 66,918,700, and that would have cost them under the contract \$522,434 or 7.81 mills per kilowatt hour.

Q. Merely by way of clarification, as I understand it, the total power purchased by the respondent in 1936 was 71,151,000 kilowatt hours? A. Yes, sir.

Q. Of which 4,232,300 kilowatt hours was sold to the railways? A. Yes, sir.

Q. Hence if the respondent reduced its purchase of power by the amount necessary to supply the railways it would have only required in 1936, 66,918,700 kilowatt hours? A. Yes, sir.

Q. And line 3 under columns 2 and 3 shows what the respondent would have paid under its present power contract for that many kilowatt hours, and also the price per kilowatt hour that it would have paid? A. That is correct.

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Q. Now, what is line 4 intended to disclose? A. Line 4, column 1, is the amount of power, kilowatt hours sold to the Railways Company. Line 4, column 2 is the increment cost of that power to the Edison Company obtained by taking the difference between their actual power bill, and their power bill had they not had the railway load. That increment cost would have been \$25,810 or 6.1 mills per kilowatt hour.

Q. And by deducting that increment cost of the Railway Company load in the amount of \$25,810 from the figure of \$38,091, shown on line 1, in column 2 as the actual price received by the respondent for the energy it sold to the railway you arrive at a profit on the sale of that energy of \$12,281? A. Yes, a gross profit.

Mr. Miller: Now, Mr. Commissioner, I think I should object to any further testimony, or even to the testimony already given on this exhibit, since the figure in line 2 indicating total power purchased by respondent does not represent the total power purchased by respondent, but that total power figure minus Gladfelter and miscellaneous customers as indicated on the exhibit. Unless we know how much was deducted for Gladfelter and miscellaneous customers we cannot determine anything with reference to the reliability of the deductions based upon the total power figure on line 2.

The Commissioner: Mr. Miller, I understand, and both you and Mr. Miles will check me if I am wrong, that the power purchased for the use of Gladfelter and others described as miscellaneous customers is purchased under separate contracts, applicable only to those special customers.

Mr. Miles: That is correct. That is entirely correct.

The Commissioner: Under a different classification and rate.

Mr. Miles: That is exactly the reason we deducted that from this showing.

The Commissioner: Is there anything in the record, or

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is it to be shown in the record anywhere, the setup under those special contracts?

Mr. Miles: The Gladfelter contract is in the record.

The Commissioner: What does: "Miscellaneous customers" mean? What does that mean, and how many are there besides Gladfelter.

Mr. Seelye: Shown in Exhibit 8.

Mr. Miles: For the same reason, in response to the last question that the persons embodied within the description "Miscellaneous customers" are likewise persons who are served under separate contracts, entirely different from the four party power agreement that is referred to in this case.

The Commissioner: Is there anything in the record, description of the Gladfelter and these other miscellaneous customers?

Mr. Keesey: The Gladfelter contract is in the record. I don't think there is anything in it with reference to these miscellaneous customers.

The Commissioner: How many of these miscellaneous customers are there?

Mr. Miller: I understand there are very few of them, and I withdraw my objection.

By Mr. Miles:

Q. Now, you have deducted from your gross profit of \$12,281 indicated on line 5 under column 2 the sum of \$615 indicated on line 6 in the same column representing maintenance cost of conversion equipment, average of 1935-1936 costs. Why is that deduction made? A. The Edison Company was obliged to spend that average amount for maintenance of conversion equipment used for service to the Railway Company.

Q. In other words, they are required to maintain certain equipment at an average cost to the Edison Company as reflected in the two year period of \$615 per annum? A. That is correct.

Q. And you therefore deducted that maintenance cost from

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your gross profit shown in the preceding line? A. That is correct.

Q. What is that conversion, Mr. Ink, that you refer to? Is it conversion from alternating to direct current? A. Yes, sir.

Q. Mr. Ink, the \$615 maintenance figure which you have just mentioned is the average maintenance cost per annum for these two years for the conversion facilities which Mr. Palmer in his testimony suggested should be deducted from the rate base, is it not? A. That is correct.

Q. And are not those same facilities used also for the delivery of power to at least two other customers? A. That is correct.

Q. And those two other customers are the Pennsylvania Railroad and the Burchall Stone Cutting Organization? A. Yes, sir.

Q. And the energy is delivered to those customers over the lines of the Railways Company? A. That is correct.

Q. Well, after making the aforementioned deduction of \$615, what is the net profit at which you arrive on the sale of power to the Railways Company by the respondent? A. Line 7, net profit on power sales to York Railways Company \$11,666 for the year 1936.

By the Commissioner:

Q. Mr. Ink, if you took the cost of power to the York Railways at 9 mills and the cost to Edison Light and Power of all that is purchased at 7.71 mills, which includes the four million and therefore makes the purchase price per kilowatt hour less to the Edison Light and Power Company, that is correct; isn't it? A. Makes it less by one-tenth of a mill.

Q. If the power purchased including York Railways requirement cost 7.71, and without the Railways it cost 7.81, then the inclusion of the York Railways demand, the purchase of that demand by Edison Light and Power reduces the cost per kilowatt to Edison by one-tenth of a mill, is that correct? A. That is correct.

Q. Then why is it not a fair calculation also to take the difference between the cost per kilowatt hour and the total load

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to Edison at 7.71 as against 9 mills received or a difference of 1.29 mills and multiply that by the 4,232,000 to find the profit of that. If you do it that way you get about \$5,450? A. I hadn't—

Q. Where am I wrong on that. It must be wrong somewhere? A. I will explain how I arrive at the increment cost of the York Railways load, that might explain it. That is obtained by subtracting from the actual demand—

Q. I understand perfectly that explanation, I think I do at least. What I was trying to say was, why isn't it just as reasonable to make the calculation by taking the figure at which Edison gets its power wholesale at the figure as represents the per kilowatt hour cost, because it buys over four million kilowatt hours for transmission to York Railways and therefore reduces it from 7.81 to 7.71, and then take the difference between what it pays per kilowatt hour and what it sells it for to the York Railways, 1.29 and multiply that by 4,232,000 to get the profit. If you do that you have just about half or a little less than half of the profit, if my figures are right. It must be, of course, because you are taking the figure of 7.71 as against 6.10.

Mr. Miles: May I interject just this observation: Of course, Your Honor understands the purpose of this exhibit is not primarily to show how much money we are making by the sale of this energy, but to the heretofore suggestion that the Railways Company is a load on the Edison Company and that that is one of the reasons why it should be taken out of the rate base.

The Commissioner: Even under the calculation that I have made, of course, it would show a profit to the Edison Light and Power Company, and I just wondered—however, go ahead. It will come out on cross examination.

Mr. Seelye: Mr. Miles, has asked me to say to you, or point out to you that if they lost this customer they would cease purchasing from the wholesale company four million some odd hundred thousand kilowatt hours which would come off the—

The Commissioner: And therefore, if they purchased four million less their cost per kilowatt hour increases

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one-tenth of a mill per kilowatt hour for the total of 66,000,000.

Mr. Seelye: For all customers.

The Commissioner: For the 66,000,000 kilowatt hours.

Mr. Seelye: That is correct, sir.

By Mr. Miles:

Q. You have shown a profit to this point as calculated by you of \$11,666, and I notice at the foot of column 4 you add a further profit of \$3,422, being an aggregate profit on the sale of energy from the respondent to the Railways Company of \$15,088. Now, will you explain items 8 to 16 for the purpose of showing how you arrived at the \$3,422 that I have mentioned. A. The contract for purchasing power imposes a penalty for average power factor below 80 percent. The average power factor of the Edison Company allowed, exclusive of the Railway load is about 67 percent lagging. In order to correct that power factor to 80 percent lagging it is necessary to operate synchronized condensers and capacitors on that system. The operation, maintenance cost and fixed charges on this equipment used for power factor correction is calculated to be \$18,025 per year, line 13. Now, that amount is extended—

By the Commissioner:

Q. What line did you say? A. Line 13.

The Commissioner: My glasses must be bad, \$18,025 appears in line 14 in my sheet—that is what you said, \$18,025?

The Witness: Yes, sir.

By the Commissioner:

Q. That appears on my sheet as line 14?

Mr. Miller: It is a continuation of line 14.

The Commissioner: I was looking on the wrong side.

The Witness: Now, the power factor of the Railway conversion equipment in the central plant is about 98 percent leading, that is, the average power factor and the

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kilowatt hours on that load supplied to the Railway Company from central plant in the year 1936 was 3,301,900, that is a little more than 75 percent of the total Railway load. That load requires no power factor corrections being at 98 percent leading power factor, and it has the effect of raising a portion of the existing load from 67 percent lagging power factor to 80 percent lagging power factor that has been calculated to amount to 8,678,100 kilowatt hours. Then the cost of power factor correction line 13 must have been extended on the balance of the load, the balance of the load being line 12, 63,096,100 kilowatt hours, and this expense for power factor correction per kilowatt hour, line 14, is .0002875 mills per kilowatt hour. We therefore credit the Railway load which is at 98 percent leading power factor to the amount of existing load corrected by the effect of that Railway load at .0002857 mills per kilowatt hour, and we get the amounts shown in lines 15 and 16. Line 15, "Credit to Railway load for correction 8,678,100 kilowatt hours, at .0002857 mills per kilowatt hour, \$2,479."

Line 16, credit to Railway load due to requiring no correction 3,301,900 kilowatt hours at .0002857 mills, \$943, or a total credit for power factor of \$3,422, which added to the credit shown in line 7 gives a total credit of \$15,988:

By Mr. Miles:

Q. Now, Mr. Ink, will you refer to the second sheet of this exhibit, which is entitled, "Statement showing the derivation of the cost and profit arising from the sale of power supplied to the York Railways Company during the year ended December 31, 1936," and without going through each of the months will you kindly explain what this exhibit is calculated to show? A. In this exhibit we have reduced the kilowatts of demand by the coincident demand of the Railway load and calculated the resulting demand charge under the contract, and have reduced the kilowatt hours purchased by amount of kilowatt hours purchased by the amount of kilowatt hours supplied by the Rail-

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May excluding the energy charge, and we find a total charge for the Street Railway load, line 14, for the year 1936 of \$522,435.

Q. That is column 14? A. Yes. The total charge for the Railway load—the total charge for all power purchased exclusive of the Gladfelter and miscellaneous customers is shown in column 15 of \$548,244. Increment cost of the power purchased for the Railway service is a difference between column 15 and column 14, shown in column 16, which is \$25,809, and column 17 shows the total revenue received from the Railway Company. /

Q. And you show there a figure of \$12,281, is that right? A. Yes, sir, that is the difference between column—

Q. Mr. Keesey says you have taken a dollar away because it is \$12,282 on the summary statement, but we won't quarrel about that.

Mr. Miles: The respondent at this time offers in evidence, and ask that it be marked as Respondent's Exhibit 7 the sheets with respect to which the witness has just been questioned.

Mr. Miller: We have no objection, Mr. Commissioner. Perhaps I went too far in saying that the exhibit presented a true picture. We will check it. I have no objection to it.

The Commissioner: Exhibit No. 7, consisting of two pages, will be admitted to the record.

Cross Examination.

By Mr. Miller:

Q. Turn to Exhibit No. 5, Mr. Ink, and refer to the portion of the exhibit marked turbine room, No. 2 turbo is marked as having a capacity of 2500 KVA? A. That is an error. It should be marked 5000 KVA.

Q. That should be 5000 KVA? A. Yes.

The Commissioner: Let the witness correct the marked exhibit.

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(The witness corrected the marked exhibit.)

By Mr. Miller:

Q. Which turbo is connected with the steam heating system?

A. No. 1.

Q. And what is No. 2 used for? A. No. 2 is used as standby, and it is occasionally used for power factor correction operating as a synchronized condenser.

Q. Mr. Ink, in the first part of your testimony you referred to various construction projects with which you had been connected, did I understand you to use the name of Pennsylvania Public Service Company? A. Penn Public Service Company, Johnstown.

Mr. Miller: I would like to defer further cross examination, Mr. Commissioner, until we have had an opportunity to study the exhibits put in by Mr. Ink.

Mr. Miles: That is as far as the respondent is able to go today for the reasons that I have heretofore given.

The Commissioner: You are not prepared to cross examine until you study the exhibits, I take it?

Mr. Miller: I can proceed with some general questions, but I think it would be in the interest of speed and orderly procedure to postpone the cross examination.

The Commissioner: That would not require a repetition of questions however.

Mr. Miller: I would have to have the witnesses back again.

The Commissioner: It would be time wasted to go ahead now. We will adjourn this hearing for the purpose of studying the exhibits of the respondent by the Commission's representatives, and set the case down for further hearing on March 10, 11 and 12, at which time, as I understand it, the respondent will be prepared to proceed with the balance of this direct testimony.

Mr. Miles: That is correct, sir.

The Commissioner: I forgot to say that sometime

Colloquy

during the early part of next week the companies representatives in this case will be advised as to the Commission's ruling on the matter that I ruled on this morning.

Mr. Miles: All right, sir.

May we be advised, Mr. Miller, at some reasonable time in advance of March 10, how many of these witnesses associated with the staff of Day and Zimmerman you want to have back here and available for cross examination, I am not asking about Mr. Seelye, he will be here at all times throughout the case, but certain of these men who worked on the reproduction cost estimates will only be here when you desire them for cross examination.

The Commissioner: Mr. Miles, I understood, perhaps erroneously, from what you said that on the 10th you would be ready to proceed with accounting testimony. That would take a considerable length of time.

Mr. Miles: That is right, sir.

The Commissioner: Wouldn't it make for more orderly procedure if Mr. Miles went ahead with the balance of his testimony on the 10th?

Mr. Miller: Yes, I think so.

Mr. Miles: I think it would, Mr. Commissioner.

The Commissioner: How long do you anticipate, I am not attempting to hold you to it, how long do you anticipate that will take, Mr. Miles? A couple days?

Mr. Miles: Yes, sir, possibly three or more probably two.

The Commissioner: Then it is understood that anyone that Mr. Miller desires for cross examination during that week may only be required to be here on Friday of that week?

Mr. Miles: All right, sir.

The Commissioner: You take Wednesday and Thursday for your accounting testimony and he will notify you as to what he will want on that particular day.

Mr. Miles: I will be glad to do that.

Hearing continued.

Colloquy

Before Commissioner STAHLNECKER:

Wednesday, March 10, 1937.

Initial hearing in above matter before the Public Service Commission, Commissioner Stahlnecker presiding, at the office of the Commission, Harrisburg, Pa., on above date, beginning at 9:30 a. m.

PRESENT:

S. G. Miller, Esq., (Harrisburg, Pa.) for Public Service Commission.

Clarence W. Miles, Esq., (Baltimore) and

V. K. Keesey, Esq., (York, Pa.) for respondent.

EVIDENCE IN BEHALF OF RESPONDENT, continued.

Mr. Miles: If the Commissioner please, your honor will recall that at the time the Commission was considering respondent's exhibit dealing with the reproduction cost new and less accrued depreciation of the respondent, attention was called to the fact by the sitting Commissioner that the item of organization expense had been inadvertently depreciated, and we therefore ask permission to substitute in the exhibit in question a new page 2 of the letter of transmittal, addressed by Day and Zimmerman, Inc., to the York Railway Company, under date of January 26th, 1937 and signed by Theodore E. Seelye. The only difference in the new page is that it carries the correction resulting from not depreciating the organization expense.

We likewise ask permission to substitute in the exhibit in question a new page 1, a new page 484 and a new page 498, which do precisely the same thing, correcting the error existing there with respect to the depreciation of organization expense.

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Mr. Miller: I do not think we will have any objection at all. I would like to look at the corrections.

Mr. Miles: I understand they are not in evidence but errors exist in them and I ask permission to correct them because Day & Zimmerman do not want to have in the files of the Commission figures which are not properly there. I am quite clear that the Commission has ruled that anything in that volume relating to reproduction cost of the railroad company, the steam heating company or the bus company is not properly in evidence in this case.

The Commissioner: The sheets making the corrections as indicated by Mr. Miles will be admitted to the record. All of the corrections are purely changes in mathematical computations.

Mr. Miles: Yes, sir; there is nothing else involved.

The Commissioner: I shall state for the record any corrections with relation to the Edison Light and Power Company will be admitted to the record, and any corrections as to the other three companies will be allowed to be made in the tabulations which are in the same volume.

Mr. Miles: Will it be understood that the stenographer will insert the pages just referred to in their proper places in the reproduction cost estimate exhibit?

The Commissioner: Yes.

T. E. SEELYE, being recalled testified as follows:

Direct Examination.

By Mr. Miles:

Q. I hand you a tabular statement entitled "Edison Light and Power Company, summary of reproduction cost estimates, tabulation showing derivation of property used and useful in the Public Service", and I inquire as to whether that was prepared under your supervision? A. Yes, sir."

Q. Will you state what the statement in question is intended

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to reflect? A. The statement shows in the first column the dollars of reproduction cost of all the assets of the Edison Light and Power Company, as set forth in the reproduction cost estimate, exhibit No. 2. The second column shows a deduction for property not used or useful in the Public Service. There are attached to this page sheets which describe this property, pages 2, 3 and 4, the total of this property being \$71,673.00. Following this in column 3 is property which we included in the reproduction cost estimates, but which we found in the course of our studies of the company's books should be the original cost estimates, actually the property of the railways. This property is described on pages 5 and 6 and include some equipment in the generating station, one of the rotary converters, foundations and other electrical equipment, poles and fixtures and overhead conductors. The total of these was \$50,687.00. We have eliminated them in this exhibit from the total of the reproduction cost estimates previously submitted, leaving a balance of estimated net useful property of \$5,572,434.00, and less accrued depreciation the sum of \$4,950,609.00.

Q. By way of summarization, as I understand this exhibit in question, you have deducted everything in there property inventoried and set forth in respondent's exhibit No. 2, two classes of property, first, that which is used and useful by the respondent in the rendition of its electrical service, and, second, that which is used and useful by it, but which is owned by the York Railway Company? A. Yes, sir.

Q. The attached sheets constitute merely the supporting data for the evaluation that has been placed after each of the respective property accounts shown on the left? A. Yes, sir; they are the same as the sheets in respondent's exhibit No. 2.

By the Commissioner:

Q. Mr. Seelye, this exhibit sheet or cover sheet is a sheet which is comparable to page 1 of the exhibit that was produced at the last hearing? A. Yes, sir.

T. E. Seelye—For Respondent—Direct

By Mr. Miles:

Q. Now, the total reproduction cost of all the property new as shown by the last exhibit was \$5,694,000.00. The reproduction cost by the elimination of these two items is reduced to \$5,572,000.00, or a reduction of \$122,000.00? A. That is correct.

Q. While the depreciated reproduction cost of the property less accrued depreciation is only reduced \$45,000.00, is that correct, from \$4,995,000.00 to \$4,950,000.00? A. Yes, sir; I think that is because of the fact that under the second column of this cover sheet of this exhibit the items marked as "Not useful" were given zero value in the total of reproduction cost depreciated.

Q. In other words, the fact that they were not used and useful led to— A. To 100% depreciation, but on the basis that properties are not used and useful, it does not destroy the reproduction cost estimate—

Q. There would be a further adjustment in the last column, namely reproduction cost due less depreciation, as compared with page 1 of respondent's exhibit No. 2, because respondent's exhibit No. 2 as originally filed inventoried depreciated organization expense? A. Yes, sir.

Q. Mr. Seelye, isn't that a fact that all of the property which appears on pages 5 and 6 of the exhibit or statement to which you have just referred constitutes all of the property that is actually used and useful by the respondent in the rendition of its service? A. Yes, sir, it does. This property has been in use by the electric company, most of it, for a great many years.

Q. The only reason that you have deducted it from the rate base is because it is owned by the York Railways Company? A. That is right.

Q. There is intended to be no suggestion on your part that the property is not useful to the Edison Company? A. No, sir; it is not so described. It is described as property owned by the York Railways Company.

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Mr. Miles: We offer in evidence the exhibit to which the witness has just referred, which has been marked by the stenographer respondent's exhibit No. 8.

The Commissioner: It is admitted to the record.

Mr. Miles: You may cross examine, ~~Mr.~~ Miller.

Mr. Miller: I would like to postpone cross examination at this time, Mr. Commissioner. I might state that we only got the copy of the transcript of testimony Tuesday evening, and we hardly had a chance to study it, and we are not prepared to cross examine at this point.

The Commissioner: Do I understand you will not be in a position to cross examine on any of this testimony so far during this hearing?

Mr. Miller: Not today, Mr. Commissioner, but we can by tomorrow or the next day.

Mr. Miles: That is quite agreeable to me because it will take us all day to present our testimony. It is a fact that the transcript did not reach any of us until yesterday afternoon. I attempted to read a good part of it yesterday evening for the purpose of making corrections. The only reason I am making reference to this is because we would like to have an opportunity to make corrections in the transcript.

The Commissioner: You will be given that opportunity.

HARRY A. REED, being recalled, testified as follows:

Direct Examination.

By Mr. Miles:

Q. Mr. Reed, I believe that you previously testified that you were associated with the engineering staff of Day & Zimmerman?

A. Yes, sir.

Q. I hand you volume entitled "Report No. 3234-A on the York Railways Company and subsidiary Companies to York

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Railways Company, York, Pa.", and I ask you if you equally collaborated with other associates of the staff of Day & Zimmerman in the preparation of that report? A. That is correct.

Q. Will you state for the record what the report is intended to disclose? A. This report is intended to cover the Day & Zimmerman, Inc. estimate of the original cost of the Edison Light & Power Company of York, Pa., The York Railways Company, The York Steam Heating Company and the York Bus Company.

Q. For the time being confine your answers solely to the properties of the Edison Light & Power Company, the respondent. Will you state the property accounts involved in that report that you had charge of in connection with the preparation of this estimate? A. My own work on this report refers specifically to account No. 204, land account; No. 207, power plant structures; account No. 209, boiler plant equipment; account No. 210, steam engines and turbines; account No. 211, turbo generators; account No. 214, coal storage and weighing equipment; account No. 215, other power plant equipment; account No. 237, transmission system land; account 240, transmission system structures; account No. 275, general office land; account No. 276, other general land; account No. 278, general office structures; account No. 279, other general structures; account No. 280, general office equipment; account No. 281, general store equipment; account No. 282, general shop equipment; account No. 284, general garage equipment; account No. 285, general laboratory equipment; account No. 286, general tools and implements.

Q. Now, Mr. Reed, in addition to personally preparing the estimates implaced within the property accounts that you have just enumerated, do I also understand that you had general supervision of the preparation of this entire report? A. Yes, sir.

Q. Before we begin to consider specific accounts, will you state in a general way the methods that were employed in reaching your estimates of original cost of the property of respondent? A. We started with the inventory of the property which is included in exhibit 2 in this case.

Q. That is respondent's exhibit No. 2? A. Yes, sir; that is

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correct. With that list of items of property we then proceeded to search in the company's records, their books, work orders, minute books, old bills and other available data, for the information that would give us the amounts expended by the company in various years, relating to the items included in our inventory.

Q. Now, refer to page 2 of the letter of transmittal in the original cost estimate. Will you state for the record the conclusions reached by Day & Zimmerman as to the original cost of the property of the Edison Light & Power Company? A. The estimated original cost of the Edison Light & Power Company for direct costs was \$4,164,769.00; the indirect costs were \$850,175.00; the total costs were \$5,014,944.00.

Q. Mr. Reed, refer next to the accounts that you personally prepared and take them in the order in which you have stated them for the record. Will you please state the method followed by you in reaching your estimate of the original cost of land as embraced within account No. 204 relating to the generating system? A. In analyzing the original cost of the land included in account No. 204, generating system, we had the deeds for every parcel of land included in this account. Information included in these various deeds disclosed to us the costs of the land at the time of acquisition and the costs of the recording fee relating to that particular parcel. The costs thus obtained are the costs that we have used relating to the descriptions included in account No. 204 in this study.

Q. There must have been some incidents, were there not, where the instruments of conveyance did not disclose the consideration paid by the grantee, and under those circumstances where did you get your information? A. We consulted the books of the company to verify that no additional costs over those mentioned had been incurred, and also to supply any information that we needed for our original costs study that was not clearly stated in the original conveyance.

Q. The only additional cost, so to speak, added to the cost of the land itself which you included was the cost of recording the instrument? A. That is correct.

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Q. Do you understand that that recording cost is paid by the grantee? A. Yes, sir.

Q. The next item relating to land is account No. 237, which is a part of the transmission system. Did you follow the same procedure there that you did in connection with the land involved in account No. 204? A. The procedure is identical for this account.

Q. For account No. 275, which is general office land, and account No. 276, which is other general land, I assume the same system prevailed? A. That is correct.

Q. Will you state for the record, Mr. Reed, your estimate of original cost for account No. 204? A. Our estimate of original cost for account No. 204, steam generating system, land, is \$29,224.00.

Q. For account No. 237, relating to land in the transmission system? A. Account No. 237, the estimated original cost is \$12,672.00.

Q. For general office land, embraced within account No. 275, you found what? A. Account No. 275, \$50,490.00.

Q. For account No. 276, relating to other general land? A. For account No. 276, \$20,004.00.

Q. Refer to page No. 133, if you will, Mr. Reed, in the original cost estimate, and state how you arrived at the figure of \$15,484.00 for the land, the building site located at 27 West Market Street. That is the site of the company's office building? A. Yes, sir; there are actually two deeds in the company's possession covering the transfer of the land and building at that location to the Edison Light and Power Company. One deed relating specifically to land is in the amount of \$15,481.00, and there is a recording fee of \$2.65 attached to that deed, which gives a total of original cost of \$15,483.65, but as we are not dealing with the odd cents in this report, that has been rounded out to \$15,484.00.

Q. The basis of the \$15,481.00 was the original record of the company itself? A. Yes, sir.

Q. In other words, the record shows that is actually what they paid for it? A. Yes, sir.

Q. Having illustrated the procedure within the items relating

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to land, Mr. Reed, will you refer next to account No. 207 for structures, the details of which are set forth, as the same relate to power plant, beginning on page No. 2 of the exhibit? Will you now state how you determined the original cost of the structures included within that account? A. We made a careful search of the company's records to ascertain the expenditures that they had made from time to time in constructing the steam power plant structure. For a part of this work the information was very clear and accurate. That covers the period from the year 1911 up to the present time.

Q. Do you mean by that observation that the records for the company are complete and accurate with respect to the costs incurred by them from 1911 to date? A. Yes, sir; relating to this specific building.

Q. As relating to the structures embodied within this account? A. Yes, sir, that is correct. Prior to 1911 the problem of identification of expenditures was a very difficult one and we were forced to resort to an estimate for that purpose. Our basis on the estimate was, first of all, to take the building in its entirety. We made a plan of that. The plan was divided into various units of property following the years in which those sections were actually built and constructed. We then took the inventory of the building which is included in respondent's exhibit No. 2 and subdivided that inventory to fit the requirements of the divisions by years on this plan which I have just referred to. Our next step was to analyze and tabulate the information that we had obtained from the various company records on the costs of labor and materials incurred in various years of the company's existence, from the period around 1890 up to the present time. With this information we were able to build a trend curve showing the change in price levels for the various years actually experienced by the company in its purchase for materials and labor in the City of York. We then used the trend curve information and applied it to the 1936 dollars for each specific division of property to obtain the related costs of those items of property as of the date that our study showed they were actually constructed.

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Q. Well now, to the extent that the books of the company recorded the actual cost incurred to them for the construction or acquisition of the property embraced within this account No. 207, you adopted the figures from the company's records? A. Yes, sir.

Q. To the extent that the books recorded them? A. Subject to such adjustments as were necessary to make the book or work order description conform to our actual inventory description.

Q. Where the costs were not so disclosed or recorded on the books of the company, do I understand that you applied material prices and labor prices actually experienced by the respondent during the years that the particular construction took place? A. That is correct.

Q. So that the ultimate result that you reached for this item is an estimate in part but it is, is it not, an estimate based on actual costs experienced by the company during the particular time in question? A. That is correct.

Q. It is not an estimate based on quotations received from some manufacturer or material people? A. No, sir; not in any case.

Q. Will you refer to page 4 of the volume which has to do with structures forming a part of the steam generating plant? The first item on that page is described as a new boiler room, the original cost of which you have estimated at \$30,846.00? A. Yes, sir.

Q. Will you state how you developed that last mentioned figure, referring, if you will, to your original work sheets? A. You will note that on page 4 at the end of the description of the new boiler room we indicate that construction of this was included in the years of 1911, 1914, 1916, 1919, 1930 and 1935. In 1911 the Edison Light and Power Company entered into a contract with the Westinghouse, Church Kerr & Company for the designing and construction, not only of the new boiler room but a part of the present turbine room. The records of that construction period are very complete but require considerable interpretation. I will explain that in this way. They clearly itemize the materials and equipment, which formed a part of the

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Westinghouse, Church, Kerr obligation to the Edison Company. All labor included for this construction work is given by total dollars and is not broken down for the various items of property or equipment. In other words, all of the payrolls during the period of that contract are lumped in one basket. The records clearly indicate the costs for the purchase of the various kinds of materials and items of equipment which are included in that work. The contract covers steam generating equipment, electrical equipment and buildings. It became our problem to take the labor costs incurred under these contracts and split our recorded amount for labor under the three general classifications that I have just mentioned, so many dollars to the steam account, so many dollars to the electric and so many dollars to the buildings. To that extent only the dollars shown in this report as relate here to the building, the electrical work or the steam work, are an estimated number, but the total of the three estimates agrees with the total shown in the contract's records, so that in that sense the allocation is an estimate but the costs of all three departments taken together are actual original costs.

Q. In other words, the expenditure of \$9,087.00 in 1911 is clearly a matter of record on the company's books? A. Not in that form. We had to take various pieces of information and bring them together to arrive at that amount.

Q. The various items that make up that aggregate sum are a matter of record? A. They are a matter of record.

Q. That same situation is true with respect to the items which you show for construction in connection with this particular structure in 1914, 1916, 1919, 1930 and 1935?

By the Commissioner: If you take all of your calculations together, your contracts, and your labor, the sum goes back to the total sum shown on the books of the Company?

A. Yes, sir.

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By Mr. Miles:

Q. I will repeat my previous question. (Previous question asked by Miles read by stenographer.) A. The same conclusion as to the source of our information, although the work done by Westinghouse, Church Kerr & Company did not continue after the year of 1914, and it was necessary for a couple of years to refer to the company's work orders showing the work required.

Q. Again, adopting the Commissioner's method of expression, you took the various component parts, which added together reached those total figures for those particular years? A. Yes, sir.

Q. There is just one other item in that account that I would like you to touch briefly on because it too is a substantial item, brick structure in the rotary room, shown on page 4. The estimated original cost of this was \$19,439.00? A. Yes, sir.

Q. What did your work sheets show with respect to that particular unit to be? A. Our work sheets show that we were unable to find any specific information that could be used for the combination or estimate of the original costs on the company's books for the only construction involved in that structure. I refer particularly to the construction in the year of 1897, of which we have an estimated cost of \$8,066.00. Whether the records have been lost or whether in those days they made an attempt to keep a record in an identifiable form for that purpose, I don't know, but we were forced to estimate the original cost on the basis of the trend information that I have previously described. We in this case used the inventory which we made and which is included in respondent's exhibit No. 2, and priced that inventory with 1936 dollars for the type of a building which we have identified as having been built in 1897. These dollars were translated by means of our trend data to 1897 dollars, with the result that our estimate shows \$8,066.00 as the estimated cost for the year of 1897.

Q. With the information or lack of information, as you care to put it, available, do you know of any other way that will

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estimate the original cost of that structure for that year could be made except on the basis that you followed? A. I do not know of any other accurate method than the one that we followed. We were particularly fortunate in this case in finding frequent mention in various years of the purchase price of various of the essential elements of construction and labor that we found in that particular room, and so I think that our estimate is as accurate as it is possible to make it.

Q. Will you refer now to account No. 240 which is transmission system structures? What was the method adopted there in arriving at your estimate of original cost? The total, I believe, appears on pages 53 and 54 of the original cost estimate? A. The estimate of the original cost that we have shown for account No. 240, transmission system structures, is the actual original cost experienced by the company and taken directly from the company's books or work orders.

Q. In other words, you did find for structures involved in the transmission system sufficient original records in the company's files to submit definite ascertainment of the original cost of those structures? A. Yes, sir; I might add that all those structures were all completed in the later period of the company's existence, from 1923 on.

Q. Just to illustrate, Mr. Reed, refer to the first item on page 53, namely the North Park Alley substation building, the original cost of which is estimated at \$14,538.00. Refer to your work sheets and tell us what you found on the company's books to support that item. A. As a matter of fact the work sheets and this sheet are identical, in that it indicates that the total dollars was directly taken from the company's books for the total cost of that substation.

Q. In other words they had vouchers showing that they actually paid that? A. Yes, sir.

Q. The only other item of any consequence is the North Park Alley substation, which is the second item, and for which you have an estimated original cost of \$3,811.00. Did you find the same supporting data to support that estimate that you found for the first item? A. The information obtained there is

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a matter of record. However, we were forced to make an estimate by allocation for one of the minor items included. There is a company work order which covers the cost of fencing both the North Park Alley substation and the Spring Grove substation, for which they paid \$724.00. The fencing area of both stations is practically the same and we therefore divided that figure by two and included half of it for the North Park Alley substation and the other half for the Spring Grove substation.

Q. That is the only expense to which any estimate has been made involved in this particular item? A. That is merely an allocation rather than an estimate.

Q. It has no relationship to the ultimate cost you reached but merely as to the allocation between the units? A. Yes, sir.

Q. The next item of property account containing any structure is No. 278, general office structures, the details of which appear beginning with page 135. Will you tell us what method you adopted for reaching your estimates as shown on that page?

A. Our estimate for the original costs of the general office structure at 27 West Market Street is entirely taken from the company's records. While this estimate indicates construction in 1927, actually the building was built a good many years prior to that time, but was acquired by the Edison Light and Power Company in 1927, and the original cost or costs which go into the amount making up the \$85,310.00 which we have shown for that figure includes \$31,123.00 that the company paid to the Suburban Land Company, plus \$54,187.00, which represented the costs of improvements and modifications.

By the Commissioner: In 1927?

A. Yes, sir; the remaining dollars in our estimate for 1928, 1934, 1935 and 1936 are figures taken from actual company records of expenditures for improvements or modifications in that office building.

By Mr. Miles:

Q. Let us refer to the last item which includes any structure, account No. 279, other general structures, and tell us the basis

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upon which you reached your estimate for the property placed within that account? A. The first item in this account relates to a warehouse at 147 West Philadelphia Street. This structure was originally built in 1916 on work order No. 151 at a cost of \$18,732.00. Subsequent additions covered by various work orders referred to in our working papers bring the total estimate for original cost to \$21,936.00. That building is entirely, the last item, taken from actual records of the company and does not involve any element of estimate.

Q. Referring to these various account numbers dealing with structures, and for the purpose of the record, will you tell me what your estimate on the original cost of the property embodied within account No. 207 aggregates? A. The estimate of the original cost for account No. 207, structures, is \$111,644.00.

Q. For account No. 240? A. Account No. 240, transmission system structures, the estimated original cost is \$20,843.00.

Q. For account No. 278? A. For account No. 278 the estimated original cost, general office structure, the cost is \$93,724.00.

Q. For account No. 279? A. Account No. 279, other general structures, the estimated original cost is \$24,121.00.

Q. Mr. Reed, in arriving at your estimates of original costs of the units of property embraced within the accounts that you have just enumerated, I should like to ask you whether or not anything is included in any of those estimates covering expenditures embodied within what we generally know as indirect or general overheads? A. There is nothing that I know of included in any of these estimates that could in any manner be called indirect or general overheads. That remark applies both to the costs taken directly from the company's records and those costs estimated by us.

Q. When we speak of indirect or general overheads, we are including, are we not, all items of expense embraced within accounts Nos. 288 to 296, inclusive, of the Commission's prescribed system of accounts? A. That is my understanding.

Q. While we are on this subject of overheads, you are generally familiar, are you not, with the results reached in the

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original cost estimate as the same relates to accounts 209 to 215, which is a part of the generating property? A. Yes, sir.

Q. Can you state of your own knowledge what has been included in those particular accounts for field office expense and supervision, that is, in accounts Nos. 209 to 215? A. The costs that have been included in accounts Nos. 209, 210, 211, 214 and 215 in general vary between 17.71% and 20.48%. The percentages were arrived at from an analysis of the actual records of the company and other information in their files for the periods during which this work was done.

Q. The books and the records of the company disclose that for the property embodied within the accounts that you have just estimated that the field office expense and supervision aggregated between 17 and 21 percent, did you say? A. Between 17.71% and 20.48%.

Q. May I ask you for the purpose of comparison what Day and Zimmerman estimated that field office and supervision expense to be in their report of the reproduction cost of this property? A. The Day and Zimmerman estimate of the reproduction cost is 12% for field office expense and supervision.

Q. Mr. Reed, let us refer next to these various items where you personally made the estimates relating to general equipment, starting first with account No. 280, having to do with general office equipment, and which appears at pages 140 to 165 of the report, and without meaning to suggest that you tell us from what source or sources you drew upon for all of these countless items under this account, will you state in a general way the method that you adopted for arriving at your estimate of original cost? A. We first examined the company's books in an attempt to find what the principal years of purchase for the innumerable items of office furniture equipment included in our inventory, were. That study showed that the majority of the items which we have included were purchased from the year 1926 to date. We then examined our own records or "Discount sheets" from various manufacturers of office furniture, fixtures and supplies, and made a comparison of the sale price for furniture in the various years from 1926 up until 1936. In addition to

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that there were some unusual pieces of equipment which are included in the inventory, such as an item of Cardex files, which stands out very clearly, and there we were able to identify the original cost paid by the Edison Company for that piece of equipment.

By the Commissioner:

Q. Or for a cash register? A. Yes, sir; and things of that type. Our comparisons were indicated to us that there had been but a very minor change from year to year into the general price level of office furniture and fixtures of the type encountered in the Edison Light and Power Company's office building and other structures. We therefore used the production cost prices included in respondent's exhibit No. 2, but without the addition of 5% for purchasing and insulation charge that we have included in the reproduction cost estimate, because we recognized the fact that this was piece meal purchasing over a period of years and there was no way of identifying exactly what those costs may have been.

By Mr. Miles:

Q. That constitutes substantially all of the items, doesn't it?

A. That method was followed for all of those general accounts referred to with the exception of the general garage equipment included in account No. 284.

Q. The method that you have described, you followed in the property placed within accounts 280, 281, 282, 285 and 286, is that correct? A. Yes, sir.

Q. I believe you started to make some observation as to the difference in your method of arriving at the estimated original cost of general garage equipment under account No. 284? A. Yes, sir; that was an exception to the rule which I have just recited. For account No. 284, general garage equipment, the dollars show in this exhibit our actual costs taken from the company's records, for all of the items included in this report, under this account.

Q. Will you give us the estimate of your original cost for

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account No. 280? A. The estimate for original cost for account No. 280, general office equipment, is \$55,000.00.

Q. For account No. 281? A. Account No. 281, general store equipment, \$3,376.00.

Q. Account No. 282? A. Account No. 282, general shop equipment, \$5,523.00.

Q. Account No. 284? A. Account No. 284, general garage equipment, \$61,662.00.

Q. Account No. 285? A. Account No. 285, general laboratory equipment, \$20,449.00.

Q. Account No. 286? A. Account No. 286, general tools and implements, \$4,213.00.

Q. Mr. Reed, did you enumerate among the account numbers for which you were directly responsible rights-of-way included within account No. 239? A. No, sir.

Q. Let us next take account No. 209 for boiler plant equipment, included as a part of the steam generating system, and tell us the source or sources from which your information was drawn to arrive at the estimates you have on that account? A. Our information for boiler plant equipment included in account No. 209 is taken from the company's records. My description of how we had used the company's records for the new boiler plant structure started in 1911. I described in detail our method of allocation of labor costs that were included in the contracts with the company, the contracts that the company had let to Westinghouse, Church Kerr & Company for the building and equipping of the boiler room and turbine room. The same comments apply in our allocation of labor included in this account for the work done by that contractor on the company's work order No. 55. The information which we have used as the basis for our estimate for the costs experienced by the company in acquiring the boilers and other items of equipment, were all included in the information backing up work order No. 55, and we have used the dollars that are shown in that information for this estimate. That same statement applies to boilers, stokers, soot blowers and other items that are now found in that boiler room. In addition to the information in the work order No. 55, we were also

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fortunate to find records and the actual contract price entered into by the company for various of these major items of equipments.

Q. Was the same work order involved in connection with boilers numbers 3 and 4, referred to on page 8 of the original estimated cost study, as were involved in boilers numbers 1 and 2 mentioned on the same page? A. No, sir; that work was done—

Q. You are referring now to items 3 and 4? A. Yes, sir; that was done in the year of 1914, also by the same contractor, Westinghouse, Church Kerr & Company, and the information is included on the company's work order No. 114.

Q. So that you were able to draw upon the original records of the company for the determination of the original costs of those two boilers? A. Yes, sir.

Q. Now, referring to account No. 210, Mr. Reed, relating to steam engines and turbines, will you tell us what you found the state of the company's records to be with respect to the original cost of the units or property in that account number, as shown on pages 15 to 16 of the report? A. The information which forms the basis of our estimate for account No. 210 is taken from company work orders, and information taken from minute books as related to the steam engines only. As regards the condenser unit on page 15 and the condenser intake and discharge conduits on page 16, that information is all taken directly from the company's work orders and other evidences of cost at the time the units were installed.

Q. You made some reference to the steam engine information having been indicated on the minutes of the company? A. Yes, sir.

Q. Do I understand that you found among the minutes of the Board of Directors some reference to the purchase of this engine? A. The minutes of the company, or the minutes of the Board of Directors, went into considerable detail about negotiations for the purchase of a steam engine and also the costs of installation, as was reported to the Board by the company offices during the period of construction.

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Q. With respect to the condenser unit and the item shown on page 16, namely a lot of intake and discharge conduits, wells, etc., the information for those two items you found among work orders and vouchers of the company? A. The majority of the information was obtained from the company's work order No. 114 in the year of 1914, a small part of it from work order No. 55 in 1911, and from work order No. 3,396 in 1922, all relating to these items of equipment.

Q. Let us refer next to account number 211, covering turbo-generators, listed on page 17 of the estimate of original cost, and tell us how you arrived at the sum of \$88,104.00 for the account shown on page 17? A. The estimate of original cost covering the insulation of the 4,000 k. w. steam turbine was made by analyzing the company work order No. 114 issued in the year 1914, in which the contract cost of the turbine is included. We ourselves estimated the cost of the turbine foundation and other minor items in connection with that, on the basis of allocation of the contract costs in a similar manner to that which I have previously described in connection with the Westinghouse, Church Kerr & Company contracts. The same comments apply to the 2,000 k. w. Westinghouse turbo-generator, except that the information was taken from the company's work order No. 55 in the year of 1911, work order No. 318 of the year 1931 and work order No. 4480 in the year of 1933. The item of turbo-generator exciter set, the estimate of original cost was all taken from the company's work order No. 55 of the year 1911.

Q. Referring next Mr. Reed to account No. 214, coal storage and weighing equipment, shown on page 47 of the estimate of original cost, upon what sources did you draw for your results as shown on that page? A. All of the information obtained by us relating to the original cost of the equipment included in account No. 214, was obtained from company work orders. The majority of the information is included on company's order No. 55 in the year 1911. The expenditures that were made in 1916 are covered by the company's work order No. 140.

Q. So that there is nothing really involved in the way of an

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estimate in this item, is there? A. I think this is entirely from original records and not by estimates.

Q. The last of your accounts, Mr. Reed, is account No. 215, covering other power plant equipment, as indicated on page 48 of the estimate. Will you tell us how you arrived at your total estimate shown on that page? A. Substantially all of the information leading to estimate of original cost for account No. 215 was taken from a study of the company's work orders, analyzed by us to determine the amount of labor relating to the costs of specific items of equipment. It was all actually encountered in the company's records.

Q. With respect to accounts No. 209, 210, 211, 214 and 215, you have already testified, I believe, that an examination of the company's records, showed that for field office expense and supervision there was a cost of between approximately 17 and 20 percent included for these direct overheads? A. There is one thing I would like to explain, Mr. Miles—

Q. Go ahead. A. The last pair of boilers installed by the company in 1916 and 1917 carries a different allowance for field expense and supervision than the others. Inadvertently I overlooked that when I was testifying previously. I want to make a correction. The facts are that the company's whole staff, using plans and some of the specifications that had been prepared for the installation of the first four boilers, undertook the installation of the last pair of boilers with their own forces, and as far as our analysis of their costs would reveal, their field office expense and supervision on those two units only was 5%.

Q. Have you made any estimate as to what the field office expense and supervision runs on all the property embraced within accounts 204 to 215? A. I haven't made a weighted analysis but the majority of boilers in those accounts will vary between seventeen and a fraction and twenty and a fraction percent.

Q. Will you for the record state your estimate of the original cost for boiler plant equipment embodied in account No. 209? A. Account No. 209, boiler plant equipment, estimated original cost was \$195,457.00.

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Q. For account No. 210, steam engines and turbines? A. \$48,490.00.

Q. For turbo-generators in account No. 411? A. \$88,014.00.

Q. For coal storage and weighing equipment in account No. 214? A. \$12,681.00.

Q. And last for other power plant equipment, in account No. 215? A. \$7,131.00.

Q. Mr. Reed, can you express any approximate opinion as to the percentage of your total estimate of the original cost of the respondent's property, which is supported from original records or books of the company? A. You mean can I state that for the entire property—

Q. First, on the accounts that you have testified to? A. On the accounts on which I have testified I would say that at least 85% of the boilers represent actual cost taken from the company's records for the items included in that inventory.

Q. With respect to the remaining boilers, those items, as I understand your testimony, have been arrived at either by relating 1936 dollars back to the date of installation from a trend and study made for that purpose, or adopting the actual expense incurred by the company in the dates of installation involved, is that correct? A. That is partly correct. I believe I testified that in the minor accounts covering office furniture and fixtures, etc., that we made comparable studies as revealed by discount sheets, catalogs of the company for the years 1926 to 1936, and that basis or that study, plus the spot check we were able to make on certain items that could be identified, we felt that the use of the cost to purchase in 1936 as an estimate of the original cost, was reasonable and we used that procedure.

Q. With respect to the general equipment, with respect to the use of 1936 dollars as of the dates of installation by the use of a trend, as distinguished from known original costs, is arrived at by constructing or determining the unit prices, based on the actual experience of the company as of the particular date of installation, is that correct? A. It resolves itself that way but the method is different. Our trend used relating to 1936 dollars under any given year was arrived at by establishing the unit

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prices. That gave us various points on the curve and we used that for each particular year.

Q. You have stated that about 85% of the dollars involved in the specific accounts with respect to which you have just been testifying, is supported by records for the company. Can you state what percentage of the total dollars shown on page 1 for the estimated original cost is supported by original records of the company? A. Referring to page one and including accounts 204 to 286, inclusive, I believe that probably 90% or better of the costs shown there are actually taken without estimate from the company's books.

Mr. Miles: He is your witness, Mr. Miller.

Mr. Miller: I would like to defer cross examination, Mr. Commissioner, until we have had a chance to study the testimony.

Mr. Miles: Your honor understands that I would like to make it clear at this time that the respondent, except for the ruling of the sitting Commissioner at the last hearing, would like to interrogate this witness and other witnesses with respect to certain matters relating to original cost of the property from the York Railways Company, the York Steam Heat Company and the York Bus Company, but I understand that the ruling of the Commissioner made at the last hearing denies us that opportunity.

The Commissioner: That is correct.

Mr. Miles: May we have an exception to that, of course?

The Commissioner: An exception is noted already on the record to that ruling and there will be now noted an exception after this proposed examination.

(Exception noted for the respondent.)

Mr. Miles: Respondent now offers in evidence and asks that it be identified and marked as respondent's exhibit No. 9, the estimated original cost of the properties of the Edison Light and Power Company, York Railways

Colloquy

Company, York Steam Heating Company and York Bus Company, the witness having testified only with respect to the properties referred to in the report as forming a part of that owned by the Edison Light and Power Company.

The Commissioner: Respondent's exhibit No. 9, insofar as it relates to the estimate of original costs of the Edison Light & Power Company will be admitted to the record. That part of the book which contains information just referred to, which relates to the York Railways Company, the York Steam Heating Company and the York Bus Company will be excluded from the record in accordance with the ruling made at the previous session, and an exception is noted for the respondent. I think I should say, however, that my ruling does not apply as to the admission to the record to any property of the York Railways Company used exclusively by the Edison Light and Power Company for transmitting electricity to other customers than the York Railways Company. I explained that specifically before.

Mr. Miles: So that we may understand each other, your honor, the respondent before it closes its case will offer an exhibit relating to the extent to which the respondent used, in connection with the rendition of its service, property owned by the York Railways Company.

The Commissioner: Will that be divided as to service to the York Railways Company and to others?

Mr. Miles: Yes, sir; the exhibit will show the use to which the Edison Company puts the property owned by the York Railways Company.

The Commissioner: Of course, I am prepared to admit that for the record, as indicated by my previous ruling.

Mr. Miles: Your honor will recall that respondent's exhibit No. 3 was a certified copy of a chart of certain tests made with respect to the boilers. The original charts are in the files of the company, and we asked that we be permitted to file in lieu of those original certified charts.

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photostatic copies, the same, and so at this time we ask permission to insert in the record as respondent's exhibit No. 3 photostatic copies of the certified boiler test charts to which I have referred.

Mr. Miller: I think that is in accordance with the arrangement at the time.

The Commissioner: That is correct. Photostatic copies of the charts will be substituted for the original exhibit in the record as respondent's exhibit No. 3.

CLARENCE A. MITCHELL, being recalled, testified as follows:

Direct Examination.

By Mr. Miles:

Q. Mr. Mitchell you have testified you are associated with the engineering staff of Day and Zimmerman, Inc.? A. Yes, sir.

Q. Will you state for the record what, if any, accounts you were responsible for in connection with the preparation of respondent's exhibit No. 9, relating to original costs of the property of the Edison Light & Power Company? A. I was directly responsible for the original cost estimate in the following accounts: account No. 239, rights-of-way transmission; account 242, poles and fixtures, transmission; account 243, overhead conductors, transmission; account 244, overhead telephone system; account 245, underground conduits; account 246, underground conductors; account 254, rights-of-way distribution; account 256, poles and fixtures; account 257, overhead conductors; account 258, overhead transformers; account 259, transformer installations; account 260, overhead services; account 262, underground conductors, distribution; account 266, meters; account 267, meter installation; account 273, street lighting system, incandescent system.

Q. Referring to the first of the accounts which you have just enumerated, account No. 239, dealing with the rights-of-way

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forming a part of the transmission system, detailed on page 52, of respondent's exhibit No. 9, will you state the method employed by you in arriving at the original cost of the property in that account? A. The estimated original cost for account No. 239, rights-of-way, was taken directly from the company's work orders, which set up for the actual expenditures by months, both for labor, for acquisition and the costs of the rights-of-way and the cost of recording, shown on the work order.

Q. So that therefore the property embodied in that account is actually the original cost indicated in the company's record? A. Yes, sir.

Q. What did you find as the original estimated cost for the rights-of-way forming a part of the transmission system? A. The estimated original cost for account 239, rights-of-way, was \$2,708.00.

Q. Your next account, Mr. Mitchell, I believe is No. 242? A. Yes, sir.

Q. Relating to poles and fixtures? A. Yes, sir.

Q. Will you state the source upon which you drew for the estimates you made for property embodied within that account?

A. Account 242 relates to poles and fixtures in the transmission system. In arriving at our original estimated cost for this account we were able to identify each transmission line as was set up in our reproduction cost estimate and inventory, and by establishing these lines we were able to secure the exact costs from the company's work orders for each individual line. That was broken down on the work orders into the material, the labor, the sundries, and to those charges we added workmen's compensation, storeroom charges and the field office and supervision expense, and by that method we obtained the estimated original cost for each transmission line.

Q. Let us see if I understand you correctly. First, take your expense for labor as involved in this account No. 242. How did you arrive at your estimate of labor expense? A. The labor expense was taken right off the company's work orders in the months in which the money was spent.

Q. In other words, the work order itself disclosed on its face

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the amount of labor that was involved in dollars into the installation and erection of the different items? A. Yes, sir; by months.

Q. That was used by you in your estimate? A. Yes, sir.

Q. How about the material cost, was that also disclosed on the face of the work order? A. Yes, sir; the material was itemized so that you could definitely identify it, and the total amount spent for material each month was itemized on each work order.

Q. There was nothing conjectural, so to speak, in your estimates as to either material or labor? A. No, sir.

Q. You adopted the costs or prices disclosed on the work orders and records of the company? A. Yes, sir.

Q. Let us go back to what you have described as sundry expenses. First, what is involved in that? A. Sundry expense includes rental of equipment, expense for gasoline and oil in the operation of the equipment, meals and board for the various men, and other minor sundries, and those sundries are set up in the work orders as such expenditures by months.

Q. So again, there is no conjecture in that but the work orders, themselves, disclose the amount expended as a part of the sundry expense? A. Yes, sir, not only does the detail give you the money but the detail gives you the nature of the expenditure.

Q. You said that you added to the material labor and sundry costs a certain percentage for store room expense, workmen's compensation and field office and supervision expense. Let us take, first, the storeroom expense. Tell us how you arrive at the figure you used for that item? A. The company's books show that their actual charges for store room overheads for each year from 1925 to 1936,—we were able to determine the percentage allowed, that the company actually experienced in charging to those jobs for those various years. That percentage runs from $7\frac{1}{2}\%$ to 18%.

Q. Just for the store room? A. Yes, sir; just for the store room overhead. That takes care of the unloading and distributing to the store room and the handling in the stores of all the material.

Q. Why should there be such a spread in that item? A. In certain years,—this was not in 1933,—it shows 18% of a store

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room charge. That, I believe, was due to the fact that during that period there was certain materials on which the freight, instead of being charged directly to the material itself, was charged into the stores, which gave us a much larger percentage for stores during that year. This is only one year in which that occurred. The rest of the percentages are around from nine and ten percent, and that is the reason for that one year being 18%.

Q. Those percentages are shown on the records for the company as expense actually incurred by the respondent? A. Yes, sir.

Q. There is nothing in the way of an estimate by Day & Zimmerman of what it might or should be? A. No, sir.

Q. The store room expense itself is constant is it not, the percentage varying in relationship to the number of poles that there might be— A. Yes, sir, you have a constant store room expense, and in addition to that if you have to increase it at any time those percentages increase, and as I say, in certain cases freight was charged indirectly against the store room.

Q. But the important inquiry is, the store room expense that you have stated is constant, which the records of the company indicate was experienced by the respondent? A. Yes, sir.

Q. Let us take the next item mentioned, namely, workmen's compensation insurance. How did you arrive at what was included for that item? A. Workmen's compensation insurance was taken from the company's records and experience. Those percentages from 1925 to 1936 run from 1.45% to as high as 6%. I might say in all of these items where we applied these two percentages, store room percentage and compensation insurance, that we applied the insurance applicable for that particular year.

Q. In other words, you applied the insurance cost experienced by the company for the year in question? A. Yes, sir.

Q. How about the item direct engineering and supervision? How did you arrive at the sum included attributable to that? A. That was worked out on the same basis, from the company's

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experience from 1925 to 1936 and the percentage runs from 5% to 15%.

Q. Lastly, with regard to account No. 242, under "estimate" you have the items of material, labor, sundry expense and direct engineering and supervision. They are all of the items that are involved? A. Yes, sir.

Q. With respect to all of them, as applied to your account No. 242, shown in respondent's exhibit No. 9, you have merely accepted the figures which the records or work sheets of the respondent disclose? A. Yes, sir.

By the Commissioner:

Q. At the end of each circuit you have a tabulation which includes four items— A. The store room expense is incorporated in the material and workmen's compensation is incorporated in the labor item. I would like to explain in connection with the percentages an exception for the meter and transformer accounts. Those percentages are 3% for the meter and transformers, for the direct engineering and supervision.

By Mr. Miles:

Q. They do not come in under account No. 242? A. No, sir, but it explains those percentages as applied to all of the accounts.

Q. Before we leave account No. 242 I wish you would refer to page 92 of respondent's exhibit No. 9, where you have an estimate of \$11,978.00 on the poles and fixtures forming a part of what you described as the Hallam circuit. Using that as an illustration, just review briefly how you arrived at your figure? A. As I stated previously, the amount of money in this estimate for each circuit or line was obtained from the company's work orders. This particular line, which is called the Hallam circuit, was obtained from the company's work order No. 298. To the expenditures, which go to make up the total cost or items as to the number of poles, cross arms, guy material and guy wires, etc., by dates in this work order, and the labor was taken off in the same manner, and the sundries, and to the material item, in 1930 and 1931 we added store room expense of 12½%.

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I beg your pardon, 10%, which was experienced by the company during those two years, and to the labor taken from work order No. 298 we added workmen's compensation, which in that year was 2.93%, and then the sundries were taken in the same manner without adding any percentage, and then adding to the total of those three items a percentage of 12½% for overhead, field engineering and supervision, which gave us a total of \$11,978.00 for that Hallam circuit.

Q. The 12½% for field supervision expense was shown on the books of the company as having been experienced by it? A. Yes, sir.

Q. As a matter of interest how many work sheets were involved or work orders were involved in the determination of the estimate of original cost of the Hallam circuit? A. Only one work order.

Q. For the entire circuit? A. Yes, sir. However, the work starts in April 1930 and runs through until April 1931.

Q. I suppose in some of the circuits there is more than one work order involved? A. Yes, sir.

Q. The same method that you have shown with respect to the Hallam circuit was followed by you in connection with all of the various circuits? A. Yes, sir; of the transmission lines.

Q. What did you find as the estimated original cost for account No. 242? A. The estimated original cost for account No. 242, poles and fixtures under transmission system is \$102,425.00.

Q. Let us take up the next account, account No. 243, dealing with overhead conductors that form a part of the transmission system, referred to on pages 99 to 105 of respondent's exhibit No. 9, and tell us how you arrived at the estimate indicated on those pages? A. In arriving at the estimate we arrived at for account No. 243, for the various transmission lines and circuits, it was arrived at by the same method as described in account No. 242. In other words, the work order in which the material and labor and sundries were taken from in account No. 242, there was also taken the amount of material, labor and sundries

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for account No. 243 in the same work order, under another account, however, but in the same work order.

Q. The same treatment of workmen's compensation insurance and field supervision expense was involved as in the other item? A. Yes, sir; account No. 243 is just the conductors and insulators. They were built at the same time as the line.

Q. What you really term estimated original cost, at least it relates to the property involved in accounts 242 and 243, is the known original costs as disclosed by the records of the company? A. Yes, sir; taken from the company's work orders.

Q. What did you find as the original cost of the property included within account No. 243? A. The original cost estimate of account No. 243, overhead conductors, transmission system, \$127,268.00.


Q. Referring next to overhead telephone system included in account No. 244, and indicated at the beginning of page 106 of respondent's exhibit No. 9, do I understand that exactly the same method was followed with respect to accounts 241 and 242 was likewise followed in relation to account No. 243? A. No, sir; not exactly. We did not look up the actual work order that this work was performed under, due to the fact it was only a small item, \$549.00 and we went directly to the company's books for that item.

Q. You did not check it against the work orders because it was an insignificant sum? A. Yes, sir.

Q. You have stated that you have included in your estimate of original cost for account No. 244 the sum of \$549.00? A. Yes, sir.

Q. The next account is No. 245 covering underground conduits, appearing at 107 of respondent's exhibit No. 9. What method did you follow for reaching your estimates for that property? A. In general that was the same as the accounts 242 and 243. In other words, we secured from the company the work order in which this underground system was actually installed, and we took from the work order the amount of material, the amount of money expended for labor and sundry expense, and

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the date of installation, and built up the original cost in the same method in which I have explained previously.

Q. Is there anything in the way of an estimate really involved in the cost of property included in account No. 245, or is it known book costs? A. That is known book costs. There is no estimate whatsoever in that account. They are the exact dollars as they appear in the company's work order.

Q. What did you find for the property involved in account No. 245, as representing the estimated original cost? A. The estimated original cost in account No. 245, underground conduits in transmission system, \$21,006.00.

Q. Would you refer to the underground conductors forming a part of the transmission system, shown under account No. 246, beginning at page 108 of the same exhibit? How did you arrive at your estimate for those units of property? A. The estimate for that account No. 246 was arrived at in the identical method as account No. 245. It was on the same work order that this was found except it was under a different account.

Q. Therefore, it is proper for me to say that this is known original cost and not an estimate? A. That is correct.

Q. What is the amount of original cost found for that item? A. Estimated original cost total for account No. 246, underground conductors in the transmission system, \$8,711.00.

Q. The next account, I believe, you are responsible for is account No. 254, relating to rights-of-way in connection with the distribution system. It is a very small item and appears at pages 109 to 112, respondent's exhibit No. 9. How did you determine the estimated original cost of those rights-of-way? A. That was taken directly from the company's books, actual expenditures for those rights-of-way.

Q. You were not required to make any estimate? A. No, sir, we were not required to make any estimate.

Q. What was the original cost that you found for the property embraced within that account? A. Total original cost for account No. 254, rights-of-way, distribution system, \$846.00.

Q. Now, the next account is the largest, I believe, of all of those of which you have had charge for supervision, and that

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is poles and fixtures in the distribution system, included in account No. 256, appearing at page 113 of respondent's exhibit No. 9. Will you refer to that page and describe what it is intended to show and give us the set-up so to speak, of the disclosure? A. Account 256, poles and fixtures in the distribution system, the original cost was obtained from the company's work orders, the company's maintenance records, and, to the material and labor and sundry expense items as found on the company's work orders, we added the percentages for the various years, to cover store room expense, workmen's compensation, field office and supervision.

Q. Percentages? A. Yes, sir.

Q. Actually experienced by the company for those given years? A. Yes, sir. In setting up this account No. 256, arriving at the original cost, we realized it would be impossible to identify the exact date in which each pole was installed. Therefore, we set up our 1936 inventory as a base. We deducted from that inventory each year the amount of materials found on the company's work orders.

Q. You mean the number of poles? A. Yes, sir; the number of poles, cross arms and guy wire, the major items of equipment in that account. The work orders were totalled up each year, as I have stated. This process continued until we had completely eliminated our inventory, and each year's expenditure as shown on page 113 of exhibit No. 9 shows the estimate for material, labor, sundry expense, direct engineering, totalled by years, and also shows the total for the entire account.

Q. Of course, what you are making here is an estimated original cost of the property of the respondent now used and useful? A. Yes, sir.

Q. For Public Service? A. The property that we actually inventoried, we attempted to find the original cost of that property, and by deducting from our inventory the amount of property installed each year, the company until our inventory was exhausted, it gave us in our estimation the most accurate method of determining the original cost of the distribution pole system.

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Q. All of the units of cost, so to speak, that is involved in this account number, are units of cost which have been obtained from the company's own records? A. Yes, sir; we have in our working papers, we have the work order numbers, for every dollar that is in these estimates, with the exception of a minor number of dollars, a small percentage of dollars, which we had to estimate the labor on for the maintenance. In other words, we were able to secure from the company their labor performances and unit costs during the various years and we secured from the stores issue cards the amount of material charged against maintenance, and the labor to install that material. Outside of a small amount of the estimate all of the dollars are actual dollars from the company's work orders.

Q. What is the total that you found for poles and fixtures under account No. 256? A. Estimated original cost total for account No. 256, poles and fixtures, distribution, \$598,739.00.

Q. Refer next to account No. 257, overhead conductors in the distribution system, beginning at page 114 of respondent's exhibit No. 9? A. Account No. 257, overhead conductors, distribution system, was handled in identically the same manner in which account No. 256 was handled.

Q. The underlying data relates to the same work order? A. Yes, sir.

Q. There is no difference in the approach or method employed in the two accounts? A. No, sir.

Q. What did you find for the estimated original cost of the property involved in account No. 257? A. Estimated original cost in account No. 257, overhead conductors, distribution system, \$504,634.00.

Q. What was the date of the inventory that was used for the purpose of this study? A. November 30th, 1936.

Q. That is the inventory too that has been used for the purpose of establishing the rate base in this case? A. Yes, sir.

Q. The next account with which you are concerned is account No. 258, relating to overhead transformers, beginning at page 115 of exhibit No. 9. What method was adopted in arriving at

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the estimate of original cost of the transformers? A. The method that we used in arriving at the estimated original cost for account No. 258, overhead transformers, was as follows: First, we took the company's transformer record cards. From those record cards we found out or determined the date of installation, the manufacturer's date, the date of manufacture and the manufacturer's make, the type of transformer. We tabulated those cards, summarized them into the various units of transformers by years, ranging from 1910 to 1936. Having established the years in which the transformers were either installed or manufactured, we secured the original cost from the company's purchase orders for those particular transformers in the particular years in which they were purchased. We were only able to go back as far as 1920 for the company's purchase orders. Prior to 1920 we secured from Westinghouse a quotation for the transformers, based on the kind of transformers that they would have supplied the Edison Light and Power Company, with their discount from 1910 to 1920.

Q. Let me ask you this, you were able to find from the books or records of the company itself the cost of the transformers purchased by them back to the year of 1920? A. Yes, sir.

Q. You were able to likewise ascertain from their records the cost of installation of those transformers, is that right, back to 1920? A. No, sir; that is a different account. Installation is a different account.

Q. You were able to determine the cost? A. Yes, sir.

Q. Back to 1920? A. Yes, sir.

Q. Back of 1920, to 1910, do I understand that you obtained the estimates from Westinghouse as to what they would have sold a comparable transformer to the Edison Light and Power Company, giving them the benefit of whatever discounts they enjoyed at the time? A. Yes, sir.

Q. You obtained from Westinghouse their price for those particular types of transformers? A. Yes, sir; to those purchase prices we added a percentage for direct engineering, which in the case of transformers, as I explained before, was 3%.

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By the Commissioner:

Q. Uniformly? A. Yes, sir; for all of the years I had that percent for direct engineering. To the material we arrived at the original cost by years from 1910 to 1936, of the overhead transformers.

By Mr. Miles:

Q. Why did you use a percentage of 3% throughout that period? A. That was the percentage we found from the company's records they had used for the transformer and meter accounts.

Q. You found that they actually experienced 3%? A. Yes, sir; I might state that their records only go back, as far as overheads are concerned, to 1925. I used 3% for all of the years prior to 1925.

Q. What did you find as your estimated original cost for overhead transformers in account No. 258? A. Estimated original cost for No. 258, overhead transformers, distribution system, \$394,091.00.

Recess until 1:45 o'clock P. M.

AFTERNOON SESSION.

1:45 o'clock P. M.

CLARENCE A. MITCHELL, resumes stand.

Direct Examination.

By Mr. Miles:

Q. Referring next to account No. 259, which is overhead transformer installation, will you state how you arrived at your estimates for that? A. We arrived at the original estimate, cost estimate, for account No. 259, which covers the installation of overhead transformers, by estimating the labor on 2421 transformer installations. The labor was estimated by taking the

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actual unit price experienced by the company during those seven years, and arriving at a weighted average unit price for transformer installation, and applied that unit against the number of transformers installed. To that we added direct engineering of 10%, giving us a total estimated original cost for account No. 259, overhead transformer installation of \$16,537.00.

By the Commissioner:

Q. You say you used a weighted average of the labor cost during those seven years? A. Yes, sir.

Q. That included the worst of the depression years? A. Yes, sir.

Q. Therefore, the average certainly did not include many years of high labor costs apparently? A. No, sir.

By Mr. Miles:

Q. How about account No. 260 for overhead services, what method did you follow in forming your judgment there as to the original cost, appearing at page 117 of respondent's exhibit No. 9? A. In arriving at our estimate of original cost for account No. 260, overhead services, this account was handled in the same manner in which accounts Nos. 256 and 257 were handled, that is, by setting up our inventory as a base and deducting the amount of material and equipment found on the company work orders each year from that inventory until we had exhausted the inventory, and to the material items each year we added the store room expense applicable to that year, and to the labor we added the workmen's compensation insurance, and the sum total of material, labor and sundry expense, we added to that direct engineering applicable to that particular year, giving us a total by years, with an over-all estimated original cost totalling for account No. 260, overhead services, of \$156,837.00.

Q. The percentages that you have used there for supervision and direct engineering were those percentages in accordance with what you found to have been the experience of the company?

A. Yes, sir. They were percentages varying from 5% to 15% in the various years, experienced by the company.

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Q. Let us take account No. 262, underground conductors, and explain how you arrived at your estimates for those units of property? A. In account No. 262, underground conductors, the estimated original cost was obtained direct from a work order to which we added various percentages for material, labor and direct engineering, to the actual material, and labor and sundry expense which was taken from the work order, arriving at a total estimated original cost for account No. 262, underground conductors, of \$7,025.00.

Q. Will you take up account Nos. 266 and 267, which comprise meters and meter installations, and tell us exactly what method you followed in arriving at your estimate of original cost there? A. In account No. 266, meters, and account No. 267, meter installations, the estimated original cost was arrived at by the same method that we arrived at the transformer account and transformer insulation account, and that is by taking the information directly from the meter cards, as to the date of installation; the type of meter and the manufacturer, and securing the prices from the company's purchase orders, from 1936 to 1920. On meters, prior to 1920, going back as far as 1909 the prices for those meters were secured from Westinghouse on the same basis that we secured the prices for transformers. That is, they were the prices for those particular types of meters during those particular years that they would have charged the Edison Light and Power Company, with their discounts. I might say that the amount of meters estimated on those prices by not taking the actual company costs but by taking the manufacturer's quotation for those years, is very small in proportion to the whole account. About 80% or 85% of the meters are from 1920 through to 1936.

By the Commissioner:

Q. Where you have the actual costs? A. Yes, sir; where we have the actual costs.

By Mr. Miles:

Q. There was only about 15% where you had to rely upon estimates from manufacturers, relating to the same type of

• *Clarence A. Mitchell—For Respondent—Direct*

meters used by the company and at the prices at which the company would have been able to purchase them? A. Yes, sir; that is true. I might say you do not have a great amount of fluctuation between meter prices over a number of years. They run very much the same straight through, it is a question of odd cents.

Q. What did you find to be the estimated original cost of meters in account No. 266? A. Estimated original cost, account No. 266, meters \$292,681.00.

Q. Will you tell us how you arrived at your estimate of original cost of installation of the meters, which is included within account No. 267? A. Estimated original cost for account No. 267, meter installation, was arrived at by estimating the labor on approximately 30,000 meter installations. That labor was estimated in like manner as transformer installations were estimated, and that is by taking the actual unit prices over those seven years, and applying that weighted average unit price to 30,000 meters, and to that labor we added direct engineering to 10%.

By the Commissioner:

Q. Apparently the labor cost of a meter was—— A. 94¢ a meter.

By Mr. Miles:

Q. Again you were in a period largely in low price levels as relates to labor costs? A. Yes, sir.

Q. What was your total estimate for the meter installation in account No. 267? A. Total estimate of original cost of account No. 267, \$34,065.00.

Q. Turn to account No. 273, municipal street incandescent system. Tell us how you arrived at your estimate of original cost for that property? A. The estimate for account No. 273, municipal street incandescent system, was arrived at by the same method in which accounts Nos. 256 and 257 were arrived at, that is, by taking our inventory as a base and deducting each year the amount of material found on the company's work orders, continuing that process until the inventory had been

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completely extinguished to the total material and the total labor and sundry expense, percentages were added each year comparable to the percentages used and experienced by the company for store room expense, workmen's compensation and field supervision and engineering, giving a total by years for the street lighting system, a grand total for the account, the estimated original cost of account No. 273, municipal street incandescent system, of \$216,014.00.

Q. In making your estimates of original cost of the various units of property embraced within the accounts regarding which you have been testifying, have you included anything to take care of what are commonly known as indirect or general overhead? A. No, sir; there is nothing in any of the accounts that I have estimated that includes the item of indirect overhead.

Q. So that there is no possibility in your opinion of anything being included within your estimates of original cost for expenditures or costs incurred in connection with overheads within accounts Nos. 288 to 296 of the Commission's prescribed system of accounts? A. Yes, sir; there is no duplication in any of my accounts.

Q. Have you given some thought to the study or determination of approximately what percentage of the total dollars involved in your estimates was obtained from the original records of the company itself? A. I haven't actually estimated the exact percentage but I can give you an approximate figure.

Q. Alright, give me an approximate figure? A. I would say that we have obtained from the company's work orders and records 95% to 96% of the amount included in the various accounts for which I am responsible.

Mr. Miles: That is all.

Mr. Miller: I would like to defer cross examination at this time, Mr. Commissioner.

A. B. Favor—For Respondent—Direct

A. B. FAVOR, having been recalled testified as follows:

Direct Examination.

By Mr. Miles:

Q. You have previously testified that you were associated with the engineering staff of Day & Zimmerman, Inc.? A. Yes, sir.

Q. You have heard the testimony here today with respect to respondent's exhibit No. 8, which was an estimate of the original cost of the respondent property? A. Yes, sir.

Q. Will you tell us for what account numbers you have been responsible in connection with the preparation of that report?

A. I have been responsible for account numbers 212, other electric generators; 213, other electric equipment; 241, sub-station equipment; 274, other utilization equipment.

Q. Referring first to account No. 212, which relates to other electric generators, which appears on pages 18 to 20 of respondent's exhibit No. 9, will you state exactly the method which was followed by you in determining the estimate of original cost indicated on those pages? A. A study of the company's records was first made to find out what work orders were involved in this account. Those work orders were pulled from the files and analyzed, by comparing with my reproduction inventory to find out just which equipment mentioned in the work orders was new in place and in use. The dollars shown as cost of purchasing and installing of the equipment was then taken off and accumulated by stations.

Q. I notice on pages 18, 19 and a part of page 20 of respondent's exhibit 9 are listed properties, units of properties, and under the column headed "estimated original cost" nothing has been inserted there representing the estimated original cost of each of the particular units. Will you tell us why that is true with respect to this one account in the report? A. That has been done to show in detail the equipment covered by the dollars shown as the total for that particular station. The reason for not putting dollars after each item was because here they are inventoried by items of equipment, but they were not necessarily

A. B. Favor—For Respondent—Direct

installed in that manner. They might have been installed fractionally perhaps.

By the Commissioner:

Q. You mean as to the rotary converters, shown on page 18, it was impossible to determine for which part of that equipment or other items you found on the work sheets were used for one or the other of the converters? A. Yes, sir.

By Mr. Miles:

Q. In other words, on page 20 you show the total estimated original cost as what? A. \$101,685.00.

Q. That property is made up of all of the various generators and condensers and converters and other units detailed on pages 18, 19 and 20? A. Yes, sir.

Q. But it was not possible to determine the exact date of installation of all of the specific units that made up that unit of property, or all of the integral parts that made up that unit of property? A. Not without going into very great detail.

Q. How did you determine the price of \$101,685.00 for the generators listed on pages 18 to 20, inclusive? A. I located all of the work orders involved in the installation of the items of equipment listed on pages 18, 19 and 20, and tabulated their costs by years. Therefore, on page 20 you will note that the work orders during 1903 totalled \$45,500.00, and so on down to 1936, with the following item unallocated. That item is the dollars which I have estimated out of the total of \$101,685.00 and covers items which I could not find in these work orders mentioned, but which I know are there to date.

Q. So that you found substantially work orders for all but \$2,500.00. A. Yes, sir.

Q. You found property to represent that \$2,500.00 but nothing on the work orders to show its cost? A. Yes, sir.

Q. You then proceeded to estimate that property in what way, generally speaking? A. Just by my own experience as to what that equipment should have cost roughly over the years that it was built. It is a very small proportion of the total.

A. B. Favor—For Respondent—Direct

Q. About 21½%? A. Yes, sir; I did not feel that it was necessary to break it down any further.

Q. What did you find to be the estimated original cost of the property embraced within account No. 212? A. \$101,685.00.

Q. Account No. 213, other electric property, which appears at pages 21 to 46 of respondent's exhibit No. 9, what method did you adopt for determining your estimate of original costs of that group of properties? A. The same method has been followed in handling account No. 213, other electric equipment, all the way through.

Q. In other words, on page 46 is shown the dates of construction, the acquisition of the various units of property embodied within this account? A. Yes, sir.

Q. You found work orders among the records of the company to show the expenditures set forth on page 46 as having been made during these particular years? A. Yes, sir; with one exception. You will find 1903 has an item of \$25,000.00. I could not find a work order for that item. That equipment is three rotary converters which were installed after 1903 and are still in existence and in use. I did find the actual bills for these rotary converters and the bills for the material, the labor and miscellaneous equipment to go with them, to a total of \$25,000.00.

Q. How did you arrive at your estimate of labor price for a piece of work in 1903? A. I used the percentage, or perhaps it was not a percentage, it was a number of dollars, against the material. The material in this case came to \$18,000.00. Therefore, there is \$7,000.00 left to cover the installation of this equipment and the miscellaneous material which in my judgment was conservative.

Q. The only other of the long string of estimates on page 46 that is unsupported by any work orders is the estimate of \$10,000.00 which you have termed "Unallocated", and which falls immediately after the 1936 expenditure? A. Yes, sir.

Q. How did you arrive at that \$10,000.00? A. That is simply an estimated figure to cover the items not accounted for in the work orders which I studied. I find that in charging to the accounts in the past, the company has often times not charged

A. B. Favor—For Respondent—Direct

their work in accordance with the present classification of accounts, on such things as conduits, also foundations, and certain other structures, and therefore rather than studying a great many work orders other than the ones involved in my own accounts, I have estimated the dollars to cover such items. In this case it is \$10,000.00 which is a round figure.

Q. It is but a fractional part of the total amount dollars involved under this property? A. Yes, sir.

Q. What did you find to be the estimated original cost for the property embraced in account No. 213? A. \$255,697.00.

Q. That brings us to account No. 241, substation equipment, which appears on pages 55 to 87, of respondent's exhibit No. 9. Will you state the method employed by you for determining your estimated original cost for that group? A. The method used for account No. 241 is the same as has been described for accounts Nos. 212 and 213, except in this case it is done by substations. It happens that 212 and 213 were at one location, a central plant.

Q. Did you find here the years in which the particular units were constructed? A. Yes, sir; this account involves substations only. Most of them have been built within the last ten years. Also most of them have been built on comparatively few work orders. There are two or three substations which have been built on a single work order.

Q. Referring to page 77, for the number 2 substation at Red Lion, do I understand from this report that that was constructed in 1929? A. Yes, sir.

Q. You took the work orders in the company's books to show the cost? A. Yes, sir.

Q. And so on page 79, where you deal with the Spring Grove substation you have listed the various dates when the construction took place and the amount of dollars, which the books of the company show were spent in each year? A. Yes, sir.

Q. Finally on page 84, with respect to the substation at West York, known as the West End substation, you there list the years in which the construction took place, and the amount of dollars that was spent in each one of those years? A. Yes, sir.

A. B. Favor—For Respondent—Direct

Q. Those figures were all taken from the books and records of the company? A. Yes, sir.

Q. What is the total that you found for the substation equipment embraced within account No. 241? A. \$415,256.00.

Q. Referring to the last of your account, account No. 274, dealing with other utilization equipment, pages 122 to 132 of respondent's exhibit No. 9, tell us what method you followed for arriving at your estimate for original cost? A. I have used the same method here as described in the other accounts.

Q. In other words, after each of the various pieces of equipment you have given the date of construction and the amount of dollars spent by the company in that year? A. Yes, sir; there are one or two exceptions. I might mention, for instance, the dental supply company on page 123, there is a transformer vault located at the dental supply company, and I could not locate the work order for building them because undoubtedly it was built and charged to some line construction account, and therefore I estimated the cost of that particular location, but you will find that the construction is unallocated in that case, as to years.

Q. I think there are only two or three instances under utilization system wherein you were compelled to make such estimates because of lack of work orders. What is the total that you found for that account? A. \$43,277.00.

Q. At recess today I asked you to refer to your work sheets and be prepared to state for the Commission approximately what the percentage of the total dollars included within the estimates of original cost, with respect to which you have just been testifying, was taken direct from the original work orders and records from the company. Can you tell us that now? A. Yes, sir; from 90% to 95% of dollars were taken from actual work orders and job orders of the company.

Q. Have you included in your estimates of original cost embraced within accounts 288 to 296 any expenditures for what are commonly known as indirect or general overhead? A. No, sir.

Mr. Miles: You may cross examine, Mr. Miller.

T. E. Seelye—For Respondent—Direct

Mr. Miller: I have no questions at this time, Mr. Commissioner.

T. E. SEELYE, being recalled, testified as follows:

Direct Examination.

By Mr. Miles:

Q. Mr. Seelye, you have previously testified that you were vice-president of Day & Zimmerman and that you have been in charge of the work of that company incident to these proceedings? A. Yes, sir.

Q. I believe you previously testified also as to the estimates made by Day & Zimmerman for what are commonly known as indirect or general overheads in its reproduction cost report? A. Yes, sir.

Q. I should like to ask you whether you were responsible for the expenditures or general overheads that are included in respondent's No. 7, dealing with original costs? A. Yes, sir.

Q. In order to avoid a needless duplication of testimony, may I inquire whether there is included within each of these accounts the same character of expenditures or costs that you previously testified to with respect to respondent's exhibit relating to reproduction costs? A. In general, yes, sir. There are two differences. In the account on organization, account No. 200, the account includes organization expense incident to the work of organizing this company and its predecessor companies. In other words, there was no inclusion in here for items representing the cost of organization with respect to the filing of prospective registration certificates before the Securities Exchange Commission, but it does have the organization expense of this company and its predecessor companies at the time they were brought into service.

Q. And the other exception—— A. The other exception was in the matter of taxes. My reproduction cost estimates included

T. E. Seelye—For Respondent—Direct

the taxes incident to the Social Security law and the Unemployment Insurance. We have eliminated that from consideration.

Q. With the exception of those two differences do I understand that the character of expenditures involved with respect to each of these accounts is the same as those with respect to those which you have previously testified in support of respondent's exhibit No. 2? A. Yes, sir.

Q. What did you find to be the organization expense of the company in considering its estimated original cost? A. For account No. 200 estimated original cost \$62,472.00; for engineering and superintendence during construction, account No. 288, \$124,943.00; for account No. 289, general officer's and clerk's salaries, during construction, \$41,648.00; account No. 290, general officer's and clerk's expenses during construction, \$31,236.00; account No. 291, office supplies and expenses during construction, \$10,412.00; account No. 292, law expenditures during construction, \$20,824.00; account No. 293, injuries and damages during construction, \$41,648.00; account No. 294, insurance against construction, \$10,412.00; account No. 295, taxes during construction, \$20,824.00; account No. 296, interest during construction, \$135,876.00; discount and expense, cost of finance, \$349,880.

Q. Did the examination by Day & Zimmerman looking through an ascertainment of the original cost of respondent's property indicate that it did actually experience the cost of character contemplated and embodied within these accounts? A. Yes, sir; however the accounts with respect to general overheads were not kept at all during the earlier days of the company's existence, or the existence of the constituent companies. In 1919, when the Commissioner's classification of accounts came into existence, and for several years thereafter they began to segregate and charge against these accounts. Actually the date was only to 1925 when charges were made against these various accounts which I have enumerated. During the period subsequent to that date an amount equivalent to \$362,613.00 was charged on the books to these accounts. This does not include the charges with respect to discount expenditures and the num-

T. E. Sledge—For Respondent—Direct

tered classified accounts under fixed capital. There is an additional item on the books in account No. 203 of \$63,125.00. We were unable to identify what was included in this amount of money. It may be general overheads or it may be actual fixed capital or it may be some other item which has gotten in here and we cannot identify the item as to what it is. It is, however, shown on the company's books at this time. The amounts shown under these various classifications on the company's books do not in any way compare with the amount which we have indicated in our exhibit. It may be due to the method which the company followed or for other reasons. There is no way to tell what the overhead expenditures were in the early days. They are not, however, in the same proportionate amount as the ones which we have set up. For accounts No. 288 to 296 we have an amount equal to \$437,723.00 in the original cost estimate, and for the same accounts on the company's books the amount is \$362,156.00.

Q. What was that difference? A. The difference is \$75,000.00. That is the amount in dollars between the two, but the amount shown on company's books apparently is only since 1925. There may be some small items covered prior to 1925. I think there is a small item deducted for engineering and an item for organization expense but that is all that seems to be here from an earlier date than 1925.

Q. You did find actually recorded upon the book expense properly taxable to one or more of the property accounts a sum within \$75,000.00 of what you have estimated to be the actual original cost for those items? A. Yes, sir, I might point out that I excluded as to account No. 200, as I said before. It shows only in the amount of \$447.00 on the company's books at the end of the past year. We have included in that account, as I previously stated, \$62,472.00 for organization expense since the inception of the original companies, comprising the present company.

Q. Do I understand what you have endeavored to do is to arrive at a judgment as to the original cost that the company has experienced in connection with these various property accounts?

T. E. Bridge—For Respondent—Cross

A. Yes, sir; I think it is judgment. It has some conception from the company's books as to amounts, but as to distribution, no; I think that that is a matter of accounting procedure.

Cross Examination.

By Mr. Miller:

Q. Can you give me a break down of your organization account No. 200? A. I can give you a break down in just a little while Mr. Miller. It represents, I might say, $1\frac{1}{2}\%$ of the direct cost of the property.

Q. I am referring to exhibit No. 3, the original cost exhibit, account No. 200. That represents a figure, $1\frac{1}{2}\%$ — A. Direct costs.

Q. What do you mean by "Direct costs"? A. Costs under items from 204 to 206.

Q. As I understood it, you did not get that figure of \$62,472.00 from the records of the company, but you got that by applying a percentage of $1\frac{1}{2}\%$? A. Yes, sir. The books of the Company at present time show an item of \$443.00 or \$447.00 for organization expense.

Q. Why did you use $1\frac{1}{2}\%$? A. That represents judgment, $1\frac{1}{2}\%$ as a percentage, and I think it is my judgment that the cost of organizing the numerous corporations which provided the company and including this one would be in the neighborhood of \$62,000.00.

Q. That is a judgment figure? A. Yes, sir; that is a judgment figure.

Q. Account No. 208, engineering and superintendence during construction, shown in the report in the amount of \$124,943.00, is that a judgment figure too? A. Yes, that represents 3% of the direct costs. The actual amounts shown on the books of the company is \$284,367.00. I do not understand that figure. It seems too high. It may be the way in which it was distributed, the way the charges were made.

T. E. Seelye—For Repeasant—Cross

By Mr. Miles:

Q. In other words, you found the books greater? A. Yes, sir.

By the Commissioner:

Q. How much did you say was on the books? A. \$284,000. On account No. 289 we have used an amount equivalent to 2% of the direct costs.

By Mr. Miller:

Q. That again is because you think that is the proper percentage to be applied to arrive at a reasonable figure in your judgment for that account? A. I think that is the amount which the company would be required to spend in order to construct this property under the classification of that account.

Q. It bears no relation to the actual book figures? A. The actual book figures which of course records only expenditures since 1925, January 1st, is \$953.00.

Q. Account No. 209, general officer's and clerk's expenses during construction. That again is a judgment figure? A. Yes, sir.

By Mr. Miles:

Q. All of these estimates are judgment figures? A. Yes, sir.

By Mr. Miller:

Q. Did you apply the same percentages to the original costs, direct costs total, as you did to the reproduction new direct costs total? A. No, sir.

Q. Will you give me the percentages which you did apply in these various accounts in your original cost estimate? A. Organization is the same. Account No. 288, engineering and superintendence, we used $4\frac{1}{2}\%$ in the reproduction cost, and 3% in the original cost. In accounts No. 289, 290, 291, 292 and 293, we have used the same percentages. Account No. 294, in-

T. E. Seelye—For Respondent—Cross

insurance, we have used one quarter of one percent original against $\frac{1}{2}$ of 1% in the reproduction cost.

Q. Why was that? A. Because building or structure would be put into service in a shorter period of time when built piece meal, and the insurance expense would therefore be less. The same with the amount of taxes during construction, which is in the amount of one half, and also interest during construction, where I have used 3%—

Q. How about taxes during construction? A. We have eliminated from taxes during construction Social Security and Unemployment insurance taxes.

Q. Did you have a percentage figure? A. One half of one percent.

Q. Then did you reduce by a figure obtained by the application of a percentage point the amounts of the Social Security taxes? A. No, sir, the difference between 1% in the reproduction cost and one half of one percent on the other cost.

Q. This account without a number, discount and expense, cost of financing, how did you compute that? A. That is computed on the basis of $7\frac{1}{2}\%$ of all of the previous accounts. This company was largely financed during a period when a great deal of the company's money was raised for what was certainly considered to be speculative purposes at the time that the properties were started some 50 years ago, at the beginning of the electric industry. The cost of money would necessarily be higher, and that would continue to be the case until probably 20 years ago. As short a time ago as 1921 money was being borrowed by utilities in this state at 8% and the bonds were sold at a discount.

Q. Do you know what the experience of the Edison Light and Power Company has been in regard to financing? A. We have prepared some information on that. I did not think we had planned to submit anything on that, but this company at the present time has notes which are collateral for bonds of the York Railways Company, which are 7% notes. At the same time the York Railways Company sold securities against those in

T. E. Seelye—For Respondent—Cross

order to raise money shortly after the war, I think, at a price of nearly \$80.00. Those are 5% bonds. That was for bond financing only. Stock financing would be at a greater discount because of the risk involved. The bond financing is on a first mortgage.

Q. What do those 5% bonds sell at now? A. The bonds sell now for nearly par. They have ranged,—they have been above par but they have come down to a point, I think \$93.00.

By Mr. Miles:

Q. They are due in December? A. Yes, sir.

By Mr. Miller:

Q. With relation to this financing of these stock issues, have you found anything in your examination of the records of the company to indicate what the cost of financing with relation to those stock issues was? A. In the early companies it is difficult to tell whether they got cash to the extent of 100% for their stock sold or not.

Q. This discount and expense, cost of financing, figure is a judgment figure which really is not supported to any material extent by the records of the company? A. I think it is supported by the records of the company but I could not very well quote it to you in a specific way. I think we could prepare a cost of money for this company which would represent the estimate which we have used.

Mr. Miller: That is all we have right now.

Mr. Miles: There is only one thing, I would like to have the privilege in the morning of recalling Mr. Seelye just long enough to have brought into the record a presentation of the comparisons of the overheads in the reproduction and the original cost estimates, because there has been a lot of reference made back and forth, and I think it might put the record in more orderly shape if we did that.

T. E. Seelye—For Respondent—Cross

By Mr. Miller:

Q. I have just one more question, do you have a schedule of the property not used and useful in the Public Service, related to the original cost estimate, similar to exhibit 8, which was prepared relative to the reproduction cost? A. No, the original cost estimate does not include the non-used or useful property.

By Mr. Miles:

Q. In other words, the original cost estimate has been related only to the property now used and useful to the Edison Company? A. Yes, sir.

By Mr. Miller:

Q. Referring to exhibit No. 8, the third column of figures, these figures relate to the reproduction cost estimate. Does the total of that third column of \$50,687.00 represent property included in the original cost estimate? A. No, sir.

Q. That has been excluded? A. Yes, sir.

Mr. Miles: That substantially concludes the respondent's case with respect to valuation, other than, so far as I can recall at the moment, one exhibit which we propose to offer through Mr. Reed, touching in more detail this question of the properties of the railways company used by the respondent, and certain general testimony from Mr. Seelye with respect to such matters as going concern value and, with your honor's permission fair value. So, if we could recess at this time without inconveniencing the Commission or the Counsel, I assure you I think I can complete the respondent's case tomorrow.

The Commissioner: If we recess now for the day until tomorrow morning, in your opinion it will facilitate the conduct of this whole case?

Mr. Miles: Yes it will.

The Commissioner: Then we will adjourn until tomorrow morning.

Adjourned until tomorrow morning at 9:30 o'clock.

T. E. Seelye--For Respondent--Direct

Stenographic report of hearing held in the Public Service Commission Building at Harrisburg, Pennsylvania, Thursday and Friday, March 11, 12, 1937.

Commissioner STAHLNECKER, Presiding.

APPEARANCES:

S. G. MILLER, Esq., Harrisburg, Pa.,
for the Public Service Commission;

CLARENCE W. MILES, Esq., 1845 Baltimore Trust Bldg.,
Baltimore, Maryland,

V. K. KEESEY, Esq., Central National Bank Bldg., York,
Pennsylvania,
for Edison Light and Power Company.

T. E. SEELYE, recalled.

Direct Examination

By Mr. Miles:

Q. For the purpose of the record will you please read percentages that you apply to the direct property accounts in the determination of organization and general overhead expenses as included in the reproduction cost estimate of the respondent in Exhibit No. 2? A. Yes. The percentages used in the reproduction cost estimates which are set out in Company Exhibit No. 2 for the indirect overheads, the general overheads, were as follows:

For Account 200 organization one and a half percent of the direct costs;

Account 288 engineering and superintendence four and a half percent of the direct costs;

Account 289 general office and clerk's salaries one percent of the direct costs;

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Account 290 general office and clerk expenses three quarters of one percent of the direct costs;

Account 291 office supplies and expenses one quarter of one percent of the direct costs;

Account 292 law expenditures during construction one half of one percent of the direct costs;

Account 293 injuries and damages during construction one percent of the direct costs;

Account 294 insurance during construction one half of one percent of the direct costs;

Account 295 taxes during construction one percent of the direct costs;

Account 296 interest during construction six percent of the direct costs and the indirect costs except interest during construction;

Discount and expenses five and a half percent of all of the direct and indirect costs.

Q. Now, will you give the same percentages that you have applied to the direct overheads as shown on Respondent's Exhibit No. 9? A. The percentages which were used for the indirect costs, general overheads in the original cost estimate, Company Exhibit No. 9, were as follows:

Account 200 organization one and a half percent of the direct costs;

Account 288 engineering and superintendence three percent of the direct costs;

Account 289 general office and clerks' salaries one percent of the direct costs;

Account 290 general office and clerks' expenses three quarters of one percent of the direct costs;

Account 291 office supplies and expenses one quarter of one percent of the direct costs;

Account 292 law expenditures during construction one half of one percent of the direct costs;

Harry A. Reed—For Respondent—Direct

Account 293 injuries and damages during construction one percent of the direct costs;

Account 294 insurance during construction one quarter of one percent of the direct costs;

Account 295 taxes during construction one half of one percent of the direct costs;

Account 296 interest during construction three percent of the direct costs;

Discount and expenses seven and a half percent of the direct and indirect costs.

HARRY A. REED, recalled.

Direct Examination

By Mr. Miles:

Q. Mr. Reed, I hand you a summary sheet entitled, "Edison Light and Power Company analysis of property owned by York Railways Company and used by Edison Light and Power Company including analysis of joint used facilities as of November 30, 1936," and ask you whether this statement was prepared under your personal supervision? A. It was.

Q. Now, will you state what is intended to be reflected by column "A" of this exhibit? A. Column "A" indicates the ownership of the property or facilities analyzed.

Q. Column "B"? A. Column "B" includes a brief description of the units of property.

Q. Column "C"? A. Column "C" indicates the beneficiary who used this property.

Q. For instance, the person who has the use of the property in question? A. That is correct.

Q. Column "D"? A. Indicates the number of units or quantities being considered.

Q. Column "E"? A. Column "E" is the estimated original cost of the respective units of property.

Harry A. Reed—For Respondent—Direct

Q. Column "F"? A. Column "F" is an estimate of the annual rental cost.

Q. Now, take line 1, Mr. Reed, and run across the summary and explain in detail just how this exhibit has been developed and from what source? A. Line 1 refers to a parcel of land near Spring Grove, owned by the York Railways Company, on which the Edison Light and Power Company has a sub-station. In column "E" still referring to line 1 is shown the estimated original cost of the land at \$241.00. Column "F" is the estimated annual rental cost at \$14.00.

Q. Now, let me ask first whether this particular unit of property referred to on line 1 under column "B" is in constant use by the respondent in connection with the rendition of its service? A. It is.

Q. In what way? A. A sub-station, in constant use, is located on this land. The sub-station being owned by the Edison Light and Power Company.

Q. Being owned by the Edison Light and Power Company, that is, the sub-station, but the land being owned by the York Railways Company? A. That is correct.

Q. From what source did you obtain your estimate of the original cost of that site? A. The estimate of original cost is based on the property records which showed the original cost of the entire tract of which this parcel is a small part. We calculated the price per acre and then took the area which is fenced in on which the sub-station is built and calculated or estimated the cost for that acreage.

Q. How did you arrive at your estimate of the annual rental cost for this particular unit? A. I used six percent of the original cost as a basis of determining the annual rental on this parcel of land.

Q. Why did you use six percent? A. My feeling that the owner of the property was at least entitled to the interest on his investment, and I felt that six percent was fair interest for property of this kind.

Harry A. Reed—For Respondent—Direct

Q. I notice this is one of the two units, the other appearing opposite line 8, that contains nothing under column "D" entitled, "Number of units or quantity." Why the omission in these instances? A. The reason for that is that no survey has been made to determine the actual area that would be necessary for the company to purchase in case they had to acquire this site. We have used in this calculation what seemed to be a fair area of approximately three quarters of an acre.

Q. It is that portion of the tract of land that is enclosed within the fence, isn't it? A. Plus an approach to the highway.

Q. Now, let us take the next item, opposite line 2. Tell us what is embodied there, and tell us how you arrive at your estimate of annual rental cost? A. Line 2 refers to a stretch of right of way owned by the York Railways Company and being situated between Smysers and Gitts Run sub-station covering a distance of approximately 13.15 miles, and which from the records of the company we have estimated the original cost to be \$42,707. This right of way is jointly used by the Edison Light and Power Company and the York Railways Company. We have estimated that the annual rental cost of six percent on the original cost amounts to \$2,562.

By the Commissioner:

Q. Six percent of the original cost considered as what—what would be a proper charge against Edison Light and Power Company for the use of that land? A. The original cost is the actual cost of the right of way.

Q. I see your six percent is calculated as to what would be at least an approximate proper return to the owner, namely, the York Railways Company for the use of that land? A. This is the estimate of the rental cost that would be incurred in case the Edison Company had to acquire an equivalent amount of right of way for their transmission line.

Harry A. Reed—For Respondent—Direct

Q. Despite the fact that both Edison Light and Power Company and York Railways get some benefit from the line? A. That is correct.

By Mr. Miles:

Q. In other words, there is no reason, Mr. Reed, why the Edison Company should get that benefit for nothing? A. No, sir.

Q. What is the character of the use to which the right of way is put by each of these companies? A. This right of way has on it a transmission line which is a benefit to the Edison Light and Power Company; it also has on it a transmission line belonging to the Metropolitan Edison Company which supplies power to the Gladtfeiter Mills from which it has a return.

Q. The mills to which you have just referred are a customer of the Edison Company? A. That is correct.

By the Commissioner:

Q. What benefit does York Railways Company get out of this right of way? A. York Railways Company has their tracks and their overhead lines on the right of way, and permits them to maintain service there.

Q. Then it does get a substantial benefit from the use of this right of way, the York Railways? A. It does get benefit from the use of the right of way.

Q. A great deal of benefit if it has its tracks on it? A. Yes.

Mr. Miles: Not only that, it owns it.

The Commissioner: I quite understand that.

By the Commissioner:

Q. But your calculation is based on an estimated charge which would be proper against Edison Light and Power of six percent of the full value or the original cost of that right of way? A. Yes, sir.

Harry A. Reed—For Respondent—Direct

Q. Despite the fact that it only gets part of the benefit from the use of it? A. Edison Company gets benefit from the—

Q. I quite understand that, but there is a value to the York Railways, a substantial value in this right of way? A. The is, but we have not indicated on this chart the value—

Q. You are talking about original cost of the right of way as I understand it? A. That is correct.

By Mr. Miles:

Q. Mr. Reed: if the York Railways Company as a result of foreclosure of its mortgage, or for any other reason was required to have the Edison Company move its lines from the right of way have you given any thought to how such line could be run by the Edison Company and what would be the character of the expenditure involved? A. I have not made detailed comparative analysis of that, but in general it would be necessary for the Edison Company to locate a transmission line in some other section, on some other site than the one they now occupy, and to that end they would have to acquire right of way rights, actually purchasing land, and they would be put to the expense of new installation of poles, towers, fixtures, wires and so forth, with, of course, some salvage probably from the existing line.

Q. Of course, another possibility would be to purchase this line in question? A. That is correct.

By the Commissioner:

Q. You can conceive of a possibility then under foreclosure proceeding where Edison Light and Power would be required to move its transmission lines off of this land? A. Very decidedly so. They have no rights there except by verbal agreement at the present time.

Mr. Miles: I think it would be more than a possibility. I think it would be highly probable under the terms of the indenture.

Harry A. Reed—For Respondent—Direct

By Mr. Miles:

Q. Now, will you refer to line 3, Mr. Reed, and tell us what is embodied in that unit and the basis of your calculation? A. Line 3 relates to a stretch of right of way located between Violet Hill sub-station and Dallastown, owned by the York Railways, from which both Edison Light and Power Company and the York Railways Company receive benefits. It covers substantially 4.42 miles, and is shown here at an estimated original cost of \$29,233, and an estimated annual rental cost of \$1,754.

Q. Mr. Reed, do you know whether or not York Railways Company actually owns that particular piece of land which you have described as a right of way, in fee? A. Yes, sir. According to the records of the company that is right of way owned in fee.

Q. And is that same true of item No. 2? A. Yes, sir.

By the Commissioner:

Q. Apparently that is a much more expensive right of way than the other one? A. Yes, sir, it is.

By Mr. Miles:

Q. Now, will you refer to the property described on line 4? A. Line 4 relates to a transmission line between Smyser's and Gitt's Run sub-station owned by the York Railways Company from which both Edison Light and Power Company and the York Railways Company are benefited. The estimated original cost of this construction is \$19,248, and the estimate of the annual rental cost is \$1925. The transmission lines covered by this analysis are actually owned and were originally built by the York Railways Company but devoted to the sole use of the Edison Light and Power Company in rendering electric service in this area.

Harry A. Reed—For Respondent—Direct

By the Commissioner:

Q. Electrical service to whom other than the York Railways Company? A. I think in part to York Railways Company and in part to the public. I am informed by Mr. Mitchell, who made a very careful study of that, that all along that line customers of the Edison Company are fed, so that it is really joint electrical service, or the combined electrical service of both Railways and the public.

Q. So that that line is used to serve both ordinary customers, so to speak, of the Edison Light and Power Company, plus service to the York Railways? A. Yes, sir.

Q. In connection with that item of \$1925, how do you arrive at that item, Mr. Reed? A. By taking ten per cent of the estimated original cost.

Q. Why did you take ten per cent? A. Well, I figure that the owner was entitled again to the interest on its investment, plus the depreciation and operating costs that he has in connection with it.

By Mr. Miles:

Q. Now, let us take the item in line 5, Mr. Reed? A. Line 5 refers to poles on the right of way between Violet Hill sub-station and Dallastown owned by the York Railways on which the Edison Company's transmission lines are located. There are 410 poles in this area, and the analysis of original cost made by Day & Zimmerman permits me to estimate the original cost of these poles at \$12,331, from which I have determined an estimated annual rental cost of \$1233.

Q. Now, the right of way between Smyser's and Gitt's Run sub-station— A. That is covered on line No. 6.

The Commissioner: You mean poles?

Mr. Miles: I mean poles.

Harry A. Reed—For Respondent—Direct

By Mr. Miles:

Q. The right of way between Smyser's and Gitt's Run sub-station? A. That is correct. Line 6 of this analysis refers to 464 poles on the right of way between Smyser's and Gitt's Run sub-station owned by the York Railways Company on which the lines used by the Edison Light and Power Company are located. The estimated original cost is \$13,955 and the estimated annual rental costs \$1396.

Q. Now, will you take up the item embraced in line 7?

A. Line 7 refers to trolley poles in York and various boroughs owned by the York Railways Company on which the Edison Light and Power Company has suspended its transmission and distribution lines there being 1009 of those poles, with an estimated original cost of \$26,466, and an estimated annual rental cost of \$2,647.

Q. Let us proceed with line 8? A. Line 8 relates to the rotary converter.

By the Commissioner:

Q. You say that on these 1009 poles owned by York Railways, Edison Light and Power Company had strung lines?

A. Had strung their transmission and distribution lines.

Q. The estimate of original cost is the estimate of the total original cost of these 1009 trolley poles? A. Yes, sir.

Q. And are these trolley poles also used in the service of the Trolley Company? A. They are used in the service of the Trolley Company, yes.

Q. They are poles which are necessary for the operation of the trolley cars? A. Yes, sir. Line 8 relates to a rotary converter in the Central Power Station owned by the York Railways Company, used by the Edison Light and Power Company in rendering electric service to the Railways. The estimated original cost is \$23,961, and the estimate of annual operating cost is \$2,396.

Harry A. Reed—For Respondent—Direct

By Mr. Miles:

Q. All right, take the next line. A. Line 9 refers to the space used by the Edison Light and Power Company for storage purposes in the Maryland Avenue car barn, owned by the York Railways Company. The Edison Light and Power Company uses 2,128 square feet of this area—I should say that is exclusively used by the Edison Light and Power Company,—and I have estimated that space at fifty cents per square foot, that appearing as being a reasonable estimate for this class of storage space, amounting to \$1,064.

Line 10 refers to the North George Street freight station in the city of York, owned by the York Railways Company, where the Edison Light and Power Company use 3,159 square feet of floor space for storage purposes. That has been estimated on the same basis, fifty cents per square foot, in the amount of \$1,580.

Line 11 refers to the Pennsylvania Avenue car barn owned by the York Railways Company, where Edison Light and Power Company uses 1,905 square feet of floor space for storage purposes at an estimated rental cost of \$950.

Line 12 relates to the Red Lion freight station and waiting room building in the borough of Red Lion owned by the York Railways Company, where Edison Light and Power Company uses 2,545 square feet of floor space for storage and repair purposes at an estimated annual rental cost of \$1,273.

Q. And what did you find to be the estimated original cost for eight of the twelve units in column "E"? A. The estimated original cost for the first eight items included in column "E" is \$168,142.

Q. And your estimate of the annual rental for all twelve items of property is what? A. \$18,794.

